Supreme Court, U.S.
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No.

In the

Supreme Court of the United States

TRISHA T. PRITIKIN,

Petitioner,

versus

DEPARTMENT OF ENERGY, JOHN D. WAGONER, in his official capacity as manager of DOE Richland Operations, and SPENCER ABRAHAM, in his official capacity as Secretary of the US DOE,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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149 pp

QUESTIONS PRESENTED:

An Article III jurisdictional question with national implications is presented in the unique situation of one federal agency, admittedly the responsible party under CERCLA for creating the health hazards, refusing to fund the activities of another federal agency responsible for the health remedial program. The Agency for Toxic Substances and Disease Registry(ATSDR) provides remediation of health risks from environmental contamination. Under CERCLA, the Department of Energy (DOE) is liable for ATSDR health activities carried out at DOE sites. From DOE yearly budget authorizations the DOE had historically provided the ATSDR a funding commitment for such activities. But when the ATSDR developed a mandatory program of medical monitoring for the Hanford population deemed at significant risk, the DOE refused to provide any funding and fails to include such funding in its budget requests.

Pritikin sued the DOE, but not the ATSDR, to force the DOE to provide the necessary funding commitment. Based upon the assumption that funding might be available to ATSDR from alternative sources, the Ninth Circuit held there was no Article III jurisdiction for lack of causal traceability. It also found lack of redressability since possibly the ATSDR might not institute its program even with funding. This Ninth Circuit opinion ignored the principles for determining traceability and redressability adopted by the U.S. Supreme Court and those of other panels of the Ninth Circuit.

Can traceability be based upon unsupported assumptions that alternative funding may have been available to the ATSDR to implement its program?

Would furnishing the program funding sought by the ATSDR likely redress Petitioner's need for its program implementation?

Can the DOE evade its liabilities under CERCLA by demanding, under the guise of traceability, that the ATSDR first exhaust all avenues of alternative funding?

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Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

I: OPINIONS BELOW

The order of the district court (per Shea, D.J.) granting summary judgment against petitioner in Trisha T. Pritikin v. United States Department of Energy, et. al., filed March 31, 1999 is reported at 47 F. Supp. 2d 1225 (1999), U.S. Dist. Lexis 12622, and is set forth in the Appendix (App. 19a.)

The opinion of the Ninth Court of Appeals (per Wardell, K.M.), filed June 13, 2001, affirming the district court is reported at 254 F.3d 791 (2001), U.S. App. Lexis 12868, and is set forth in the Appendix (App. 1a). The Ninth Circuit order denying a petition for rehearing and rejecting the suggestion for rehearing en banc was filed September 6, 2001, and is set forth in the Appendix (App. 33a-1).

II: STATEMENT OF JURISDICTION

This petition for writ of certiorari is being filed less than 90 days following the denial on September 6, 2001 by the Ninth Circuit of the petition for rehearing, and petitioners invoke this Court's jurisdiction under 28 U.S.C. § 1254(1).

III: STATUTORY PROVISIONS INVOLVED

In addition to Article III of the U.S. Constitution, the statutory CERCLA provisions of 42 U.S.C. sections 9620, 9604(i), 9607 and 9659 relevant to this petition are reprinted in the Appendix (App. 34a).

IV: STATEMENT OF THE CASE

a) Background

In 1993 a Citizen Suit was filed against the Agency for Toxic Substances and Disease Registry (ATSDR) to furnish a program of medical surveillance for the downwind population exposed to harmful radioactive releases from the historical operations of the Department of Energy (DOE) Hanford plutonium production plants in Washington State beginning December, 1944, and continuing to the mid-seventies. Under CERCLA provisions 42 U.S.C. 9604(i), the ATSDR was given the authority to make the health assessments and provide a program of medical surveillance upon a finding of an increased risk of adverse health effects. This action was dismissed as premature, affirmed in *Hanford Downwinders Coalition, Inc. v. Dowdle*, 71 F.3d 1469 (9th Cir. Dec. 1995). However, in negotiations during the pendency of the appeal, the ATSDR agreed to take the steps necessary to determine if the findings needed to establish the program were applicable. In 1996, the ATSDR made its finding of an increased risk of adverse health effects from the radioactive releases, which triggered the ATSDR's statutory duty under 42 U.S.C. 9604(i)(9) to provide a program of medical surveillance to the exposed population at risk. To implement this duty the ATSDR presented to the DOE a comprehensive program of medical surveillance for an estimated 14,000 persons with eligible exposures, and requested the DOE to provide the commitment to fund the estimated costs, which the DOE refused. The present Citizen Suit was commenced in April, 1998, by Pritikin against the DOE to enforce its duty to provide ATSDR with the necessary funding commitment for ATSDR's proposed medical monitoring program. A discovery conference under FRCP 26(f) was rejected by the DOE which brought a 12(b)(1) motion alleging lack of subject matter jurisdiction and requesting a summary judgment of dismissal. Although there has been no discovery in the case, Pritikin was

informally furnished various materials by the ATSDR such as copies of the various funding agreements reached between the DOE and ATSDR for their activities in previous years and DOE/ATSDR correspondence which were made part of the record before the district court. DOE's motion was granted by the district court in April, 1999.

The issue of Article III standing was raised by the DOE for the first time in the appeal to the Ninth Circuit. In its opinion filed June 13, 2001, the Ninth Circuit found that while the district court could not be affirmed on the issue of subject matter jurisdiction, it could be affirmed on the basis that Article III standing was lacking. The premise of the opinion was that traceability was not clear since the ATSDR hypothetically had alternative funding available from the Superfund or other sources and redressability could not be assured without a judgment against the ATSDR since it might change its mind even with DOE funding.

b) Statement of Facts

The undisputed factual record plaintiff furnished the district court consisted of copies of Interagency Agreements (IAG's), Memorandums of Understanding (MOU's) and related correspondence, including:

A series of yearly IAG's beginning in 1991 and continuing through September, 1997, establishing a history of DOE funding of ATSDR activities at the various DOE sites. These IAG's were executed under the authority of a 5-year MOU effective to September 30, 1997, and renewed for another year to September 30, 1998. The fiscal years for appropriation run from October 1st to September 30th of the following year, meaning this MOU was in effect during the DOE budget planning period for F/Y 1998 and F/Y 1999. This MOU states:

> "DOE-EM and DOE-EH shall provide appropriate support to the ATSDR for the

conduct of public health assessments, health consultations, and health activities related to public health recommendations at or near DOE facilities and installations."[1]

Under this MOU and the yearly IAG's continuing up through September 30, 1997, the DOE had funded the health assessment activities of the ATSDR at various DOE sites, including Hanford. These IAG's would commit the DOE to fund an agreed total for specified activities, and the DOE would subsequently pay the costs billed by the ATSDR as the activities were carried out.

The ATSDR submitted its final plan to the DOE in January, 1997. This was to be the first medical monitoring program of exposed population groups around any of the DOE sites nationwide. This was followed by a series of letters from the ATSDR to the DOE submitting its monitoring program funding budget covering F/Y 1998 through F/Y 2002, and showing a growing concern over the DOE's delayed response to the IAG proposed by ATSDR for a F/Y 1998 funding commitment. By letter of October, 1997, after the F/Y 1998 budgeting and appropriation process had closed, the DOE manger of Hanford operations wrote that the DOE would not be able to accept the proposed IAG for F/Y 1998 since it was unfunded, not surprisingly, since DOE had failed to make any budget requests for it to Congress.

Shortly after Pritikin gave notice in January 1998 of intent to sue, the DOE made a belated request to the House Committee on Appropriations to reprogram $5,000,000 from an existing F/Y 1998 appropriation for another DOE program to be transferred to the Hanford medical monitoring program. This was without fruition. In their June 1998 Report, the

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[1] It is stated in this MOU that it was made under the authority of CERCLA sections, among others, 42 U.S.C. 9620, 9604(i)(9), 9604(i)(11), 9604(i)(17) and 9607, the very same sections Pritikin relied upon to establish subject matter jurisdiction under the Citizen Suit provisions of 9659.

House Committee on Appropriations requested that beginning in F/Y 1999 the DOE must specifically identify in its budget requests a line item for any funding for Hanford medical monitoring.

The DOE claims a lack of Congressional appropriation as its excuse for not funding the ATSDR medical monitoring program at Hanford. Yet the DOE has deliberately omitted any such funding in its annual budget requests to Congress, admitting there was no such funding request in its F/Y 1998 budget and acknowledged in oral argument that neither were any such budget requests made for F/Y 1999 or F/Y 2000, nor have they made any for F/Y 2001 or F/Y 2002. However, the DOE has continued to budget for and fund other types of ATSDR activities at DOE sites, but not monitoring.

c. Erroneous Assumptions

A related corollary to the Question Presented is whether the determination of causal traceability can be made on the basis of mere assumptions without a factual basis. The assumption and suggestion in the Ninth Circuit Opinion that the ATSDR could expend Superfund monies for its program and then seek reimbursement from the DOE would be impossible for the ATSDR to enforce against the DOE since under our federal system, one federal agency cannot proceed in litigation against another federal agency. Only an action such as Pritikin's can obtain judicial enforcement. It would also be impossible because the Opinion's assumption that Superfund monies were available to the ATSDR is unsupported by the actual facts. The EPA has taken the position that as to DOE sites no Superfund money is available. In September 1998, after the DOE had declined funding, the ATSDR met with the EPA to obtain Superfund monies for their Hanford medical surveillance program, and were rejected. See letter of July 2, 1999 from EPA to ATSDR

(App. 100a) confirming this position.[2] This position is consistent with the yearly billion dollar property cleanup program at Hanford which is funded entirely by the DOE, not the Superfund.

Also erroneous is the Opinion's assumption that somehow the ATSDR can seek funding directly from Congress. The ATSDR can now seek funding for its non-federal facility activities directly from its relevant Congressional appropriation subcommittee. However, all funding requests for work related to federal facilities are only part of the budget requests by the federal facility involved such as the DOE in this case, not the ATSDR. See reporters's transcript of comments by Henry Falk, Deputy ATSDR Administrator (App. 103a). It would not be logical otherwise for the ATSDR to obtain an appropriation from one subcommittee, and for the DOE, which must pay or reimburse the costs for such activities as part of its budget, to

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[2]A Superfund expenditure was first raised by the DOE before the district court as being necessary in the context of alleged lack of subject matter jurisdiction, to which Petitioner cited the various cases holding that a Superfund expenditure is not a predicate to liability under §9607. The factual status of what alternative funding would actually even be available, not appearing as an issue until the appeal stage, had not been developed by the time of the Ninth Circuit decision, made on an insufficient record. This EPA letter (App100a) rejecting Superfund use at DOE sites was previously unavailable to Petitioner before its Opinion. Likewise previously unavailable was the recently transcribed record of comments by the ATSDR assistant administrator Dr.Falk (App.103a).

obtain another appropriation from its subcommittee for the same costs.

The consecutive years of DOE funding of ATSDR's activities at Hanford and other DOE sites was not broken until the November 1997 DOE rejection of the proposed 1998 IAG for Hanford medical monitoring. With the ATSDR's lack of any alternative Superfund source of funding, and the lack of ATSDR authority to seek Congressional funding for its federal facility activities, the DOE denial of funding was clearly the cause in fact of the ATSDR's inability to launch its program. The DOE's continued refusal to request a funding appropriation for the program is also why no funds have since been appropriated for the program.

d) The Ninth Circuit Opinion Ignored and Disregarded the Principle Adopted on Standing by this Supreme Court

The Ninth Circuit took no cognizance of *Bennett v. Spear*, 520 U.S. 154, 169 (1997) although cited by Pritikin. In *Bennett*, plaintiffs sought review of a biological opinion issued by the defendant Fish and Wildlife Service, which outlined measures for the operation of a project conducted by the Bureau of Reclamation, a non-party. Article III standing was challenged on the grounds that the injury was neither fairly traceable to the biological opinion, nor redressable because the action agency, the third party Bureau, retained ultimate responsibility for determining how to proceed. A unanimous Supreme Court held that Article III redressability existed since the actions of the challenged party would have a "coercive or determinative effect" upon the third party agency. Pritikin suggests that there is probably no DOE action that could be more coercive or determinative upon the actions of the ATSDR than the withholding of its source of funding for it activities at a DOE site.

e) Cases cited by Ninth Circuit are Inapposite and its Opinion is Contrary to other Ninth Circuit Cases

In the primary case relied upon in the Opinion, *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, the respondents had challenged an IRS ruling they believed was encouraging the denial of indigent hospital services by hospitals not parties to the action. This Court held that since the hospitals were free to utilize or dispense with the tax benefits of providing indigent care, as they may choose, that the alleged injuries from the denial of services was not fairly traceable to the IRS ruling and that the redressability of invalidating the challenged IRS ruling was speculative.

In this case, contrary to the hospitals in *Simon*, the ATSDR has an affirmative statutory duty to furnish a medical surveillance program for the exposed downwind population. The ATSDR has accepted this duty, and had formulated a comprehensive program of medical surveillance to implement this duty. The ATSDR had developed and submitted the requisite requests and IAG's for the DOE to provide the necessary funding. When denied by the DOE, the ATSDR sought alternative Superfund funding from the EPA. The ATSDR had both the acknowledged duty and the demonstrated intent to provide the medical surveillance services desired by Pritikin, which have been frustrated only by the DOE's refusal of funding requested by the ATSDR.

The Opinion requires a failsafe standard of redressability and proposes a scenario in which, even if DOE committed the funding, the ATSDR might refuse to comply with its statutory mandate to provide a medical surveillance program. This is contrary to a nearly identical Ninth Circuit case in which the same scenario was posited. In *Graham v. Federal Emergency Management Agency*, 149 F.3d 997, 1003 (9th Cir. 1997) the *Graham* district court had held that there was no Article III redressability because a third party not before the court, the Federated States of Micronesia

(FSM), which was charged with implementing the distribution of funds to be received from FEMA, might not reinstate its program and pass the funds along to the plaintiffs. The Ninth Circuit on appeal distinguished those cases where the party not before the court was the funding agency and had an "unfettered" discretion. Whereas in *Graham*, the funding agency, FEMA, was before the court and FSM was obligated under the regulations and its agreement with FEMA to make the disbursements to the applicants FSM had approved.

> "The defendants' speculation that FSM might conspire to evade the mandatory language of the regulations and its agreement does not defeat plaintiffs' standing", *Graham* at 1003.

In *Pritikin* the funding agency, the DOE, is also before the court. Also, the third party action agency, the ATSDR, has an affirmative statutory duty to provide the relief sought. It is equally a "speculation" in *Pritikin*, as it was in *Graham*, that once funding became available from the DOE that the ATSDR might evade its acknowledged statutory mandate to provide medical monitoring.

The failsafe standard set in this case by the Ninth Circuit is also more than required by other Ninth Circuit decisions. *Beno v. Shalala* 30 F.3d 1057, 1065 (9th Cir. 1994) "...a federal plaintiff must show only that a favorable decision is *likely* to redress his injury, not that a favorable decision *will inevitably* redress his injury..." (italics in original). Nor does the fact that the redrafting of an EIS might not change the Secretary's decision defeat standing. See *Seattle Audubon Society v. Espy*, 998 F.2d 699, 702 (9th Cir. 1993) and *Idaho Conservation League*, 956 F.2d at 1518. (9th Cir. 1992). See also *Tyler v. Cuomo* 236 F.3d 1124, 1133 (9th Cir. 2000).

In *Duquesne Light Company v. EPA*, 166 F.3d 609 (3rd Cir. 1999) cited in the Opinion, the Pennsylvania

Department of Environmental Protection, the non-party action agency, was **not** under any legal duty to change the definition being challenged. Similarly, in the other case cited in the Opinion on this issue, *Area Transportation, Inc. v. Ettinger*, 219 F.3d 671 (7th Cir. 2000), it was only conjecture that the additional relief requested would influence the third party, who was under no legal duty to act in the manner desired by plaintiff.

f) National Importance

An additional factor that merits a writ of certiorari is the national importance of the DOE's responsibility to provide funding to the ATSDR, the agency mandated under CERCLA to make the necessary health assessments and remedial health effects activities at such locations where the environment has been effected. The DOE has developed a list of facilities operated by the AEC/DOE atomic weapons contractors in which radiation exposures may have occurred sufficient to have caused potentially compensable injuries to workers. (See *Federal Register* / Vol. 66, No. 112 / Monday, June 11, 2001 / Notices, pg. 31218-31224, (App. 111a). Excluding the Beryllium vendors, there are 296 such facilities spread among 40 states throughout the country in which there was enough exposure from radioactive materials to warrant the possibility of adverse health effects to those workers exposed. In many cases the release or escape of any such materials so as to cause a worker exposure will necessarily implicate the offsite environment, such as at the DOE sites at Hanford, Rocky Flats, Oak Ridge, Los Alamos, Savannah River, and Fernald, to name just a few.

By withholding ATSDR funding, the nation's preeminent radioactive polluter has been able to achieve a coercive influence over ATSDR monitoring programs for the U.S. populations exposed to releases from DOE sites. **None** have yet been done. In contrast is the fact, set in the record before the district court, that the DOE has sought and

obtained appropriations for programs of medical monitoring of population groups in several foreign countries. It can be noted in the remarks by Dr. Falk (App.103a) that the ATSDR has been meeting with the DOE, without success, to determine what kind of program for which the DOE may seek funding. Congress never intended that the public health agency should need go to the polluter like a supplicant for approval as to the scope of the health remediation activity and such coercive influence and veto power by the polluter makes a travesty of CERCLA intent and purpose.

Conclusion

Since the ATSDR was without any other source of funding, the lack of program implementation was directly *traceable* to the continued DOE denial of funding. By developing and promulgating a full scale medical surveillance program, and its continued efforts to seek funding, the ATSDR has demonstrated its recognition of its statutory mandate, making it highly *likely* that it will implement the program as soon as funding is available. Accordingly, Pritikin has Article III standing. The DOE should not be permitted to exercise coercive influence, either by veto as previously occurred or by delay in the future, over the remedial health activities at its various sites where population exposures have occurred. A writ of certiorari should be granted and the judgment of the Ninth Circuit appeals court, and the district court, should be reversed. There is subject matter jurisdiction and Article III jurisdiction.

Respectfully Submitted,

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UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

TRISHA T. PRITIKIN,
Plaintiff-Appellant,

v.

DEPARTMENT OF ENERGY, JOHN D. WAGONER, in his official capacity as manager of DOE Richland Operations, and SPENCER ABRAHAM, [1] in his official capacity as Secretary of the US DOE, Defendants-Appellees.

February 15, 2001, Argued and Submitted, Seattle, Washington

June 13, 2001, Filed

PRIOR HISTORY:
Appeal from the United States District Court for the Eastern District of Washington. D.C. No. CV-98-3049-EFS. Edward F. Shea, District Judge, Presiding.

DISPOSITION:
AFFIRMED.

COUNSEL:
Tom H. Foulds, Tom H. Foulds & Associated Counsel, Seattle, Washington, for the plaintiff-appellant.

David C. Shilton (argued), Department of Justice, Washington, D.C., for the defendants-appellees.

Greer S. Goldman (on brief), Department of Justice

Environment and Natural Resources Division, Washington, D.C., for the defendants-appellees.

JUDGES:
Before: Stephen Reinhardt, Kim McLane Wardlaw, and Ronald M. Gould, Circuit Judges. Opinion by Judge Wardlaw.

OPINIONBY:
Kim McLane Wardlaw

OPINION:
WARDLAW, Circuit Judge:
Trisha T. Pritikin appeals the district court's entry of summary judgment in favor of the Department of Energy ("DOE"). Pritikin sued DOE to compel it to budget for the medical monitoring program that the Agency for Toxic Substances and Disease Registry ("ATSDR") was required to institute at the Hanford Nuclear Reservation ("Hanford"). The district court concluded that it lacked subject matter jurisdiction on two grounds: (1) Pritikin failed to meet the requirements for instituting a citizen's suit under the Comprehensive Environmental Response, Compensation, and Liability Act, *42 U.S.C. § 9659*(a)(1) and (2) ("CERCLA"); and (2) there was no final agency action to challenge under the Administrative Procedure Act, *5 U.S.C. § 701*, et seq. ("APA"). We agree that we lack jurisdiction to entertain this action, but rely on a third ground: Pritikin lacks constitutional standing to compel DOE to make budget requests and to reprogram existing funds for the medical monitoring program because she cannot show that its failure to do so is the cause of the injury she seeks to redress or that requiring DOE to do so will result in ATSDR's implementation of the medical monitoring pro-gram. We have jurisdiction pursuant to *28 U.S.C. § 1291*, and we affirm.
I. Factual Background
The Hanford Nuclear Reservation in Richland, Washing-ton,

is owned by DOE and was established in 1943 as part of the Manhattan Project to produce plutonium for nuclear weapons. For three decades, radioactive, toxic and hazardous sub-stances were released from Hanford as by-products of the plutonium production process. From 1944 to 1957, it is estimated that 700,000 to over 1.1 million curies of radioactive iodine-131 were emitted into the air through exhaust stacks, and more that 22 million curies of radioactive material were released into the Columbia River during the cooling process. These releases exposed thousands of persons living and working downwind and downstream from the site to radioactive iodine. The most damaging exposure to radioactive iodine-131 occurred through the consumption of contaminated milk, produced by cows grazing in contaminated fields. Human exposure to radioactive iodine-131 often results in thyroid disease, as the toxic chemical is usually stored in the thyroid gland.

In 1989, the Environmental Protection Agency ("EPA") placed the Hanford site on its National Priorities List ("NPL"), which ranks the most serious hazardous waste sites in the United States, and since that time, Hanford has been the subject of an environmental cleanup. To expedite the clean-up, ATSDR and DOE entered into a Memorandum of Under-standing ("MOU") and a series of Interagency Agreements ("IAGs") to delineate the responsibilities of the respective agencies as well as to provide funding for the ATSDR's statutorily required health assessment activities at the Hanford site for fiscal years ("FY") 1991-1996. In 1994, as part of a negotiation during the pendency of the appeal of *Hanford Downwinders Coalition Inc. v. Dowdle, 841 F. Supp. 1050,* aff'd, *71 F.3d 1469 (9th Cir. 1995),*[2] ATSDR initiated a formal review of the health effects of hazardous substances at Hanford. In 1997, ATSDR concluded that there was "a significant increased risk of adverse health effects in humans from expo-sure to hazardous substances" due to toxic waste exposure. Once this "significant risk" determination was made, *42 U.S.C. § 9604*(i)(9) required ATSDR to

implement a medical monitoring program to screen the population for those diseases for which the risk had been significantly increased and to refer affected individuals to treatment. *42 U.S.C. § 9604*(i)(9).

In February of that same year, DOE transferred the Hanford funding responsibility from its headquarters to a field office in Richland. [3] Following the transfer, in a letter dated October 10, 1997, John Wagoner, manager of the DOE-Richland Operations Office, informed ATSDR that DOE could not" accept the funding burden specified in [the August 11, 1997] draft IAG." [4] Explaining that the regional office could not accept "unfunded mandates" from DOE Headquarters and its belief that it is "unacceptable for DOE to fund non-Environmental Management activities with Environmental Management funds," Wagoner specifically requested that ATSDR help DOE "engage the Administration on the issue of funding." As an interim measure, Wagoner requested that ATSDR identify the minimum funding levels it needed to begin work in FY 1998. ATSDR and DOE-Richland never reached an agreement, and as a result, no IAGs were established after FY 1996. In early March, Pritikin served her Notice of Intent to Sue, dated January 13, 1998.

Approximately one week later, on March 19, 1998, DOE announced its intent to transfer $ 5 million from another appropriation toward funding the medical monitoring program. DOE did not include funding for ATSDR's medical monitoring program in its budget proposal for FY 1999, and ATSDR has yet to begin the statutorily required medical monitoring program.

Trisha T. Pritikin was born in Richland, Washington, near the Hanford facility, in 1950, and she lived there for the first ten years of her life. As a result of in utero and childhood exposure, Pritikin's thyroid gland and endocrine system were severely damaged. Thus, she is qualified to participate in ATSDR's medical monitoring program. She initiated this suit to force ATSDR to implement the statutorily required program. Pritikin believes that if DOE were to first request and

then provide the funding, ATSDR would begin the medical monitoring program, and her medical needs would then be addressed.

II. Statutory History

To understand why Pritikin does not have standing to bring this cause of action against DOE, it is necessary to understand the statutory framework of CERCLA [5] --and, in particular the responsibilities it imposes on the different agencies involved in the clean-up of a toxic waste site. CERCLA was enacted to "'protect and preserve public health and the environment' by facilitating the expeditious and efficient cleanup of hazardous waste sites." *Dowdle, 71 F.3d at 1473-74* (quoting *Wilshire Westwood Assoc. v. Atlantic Richfield Corp., 881 F.2d 801, 804 (9th Cir. 1989)).* CERCLA establishes a procedure to facilitate hazardous waste site clean-ups and insures that whoever undertakes the clean-up can recover those costs from potentially responsible parties ("PRPs"). *42 U.S.C. § § 9604,* 9606, 9607, and 9620. Here, DOE qualifies as a PRP under § 9607(a)(4) because, as the owner of the Hanford site, it accepted hazardous substances for transport.

The 1986 Superfund Amendments and Reauthorization Act ("SARA") established ATSDR within the Department of Health and Human Services to assess and study the health effects of hazardous substances and to institute medical programs when needed. *42 U.S.C. § § 9604*(i). The PRPs are liable for, among other things, "the costs of any health assessment or health effects study carried out under section 9604(i)," and liability attaches even if the PRP was unaware of the toxic waste at the time in question. *42 U.S.C. § 9607*(a)(4)(D). Thus, DOE is liable for the cost of any medical monitoring program that ATSDR "carried out "at Hanford. CERCLA also allows Superfund money to be used to finance the clean-up and provides a cause of action for its reimbursement from PRPs. *42 U.S.C. § § 9607*(a) and 9611(a). Section 9620 waives the federal government's sovereign immunity and makes those federal departments and

agencies which qualify as PRPs subject to § 9607 liability. Section 9620 also requires the head of the each responsible federal department to (1) enter into an IAG with the EPA administrator to expedite the completion of all necessary remedial action; (2) submit a review of alternative agency funding for the remedial action in its annual budget to Congress; and (3) submit an annual progress report. *42 U.S.C. § 9620.*

III. Prior Proceedings

Pritikin brought this action against DOE pursuant to the Citizen Suit provisions of CERCLA, *42 U.S.C. § 9659*(a)(1) and (2), and the APA, *5 U.S.C. § 701*, et seq. She seeks a declaration that DOE is liable for funding ATSDR's medical monitoring program and an injunction compelling DOE to (i) include in its budget requests the amounts necessary to fully fund the Hanford medical monitoring program and disease registry program for FY 1999 and beyond; (ii) reprogram budget items committed to it for other programs or by special appropriation in its FY 1998 budget to cover the full amounts planned by ATSDR for its Hanford program; and (iii) to comply with CERCLA reporting requirements and disclose to Congress its failures to fund ATSDR's mandatory programs and to reach IAGS with ATSDR. DOE moved for dismissal pursuant to Fed. R. Civ. P. 12(b)(6), or in the alternative, for summary judgment for lack of subject matter jurisdiction.

Neither party raised the issue of standing in the district court. As a result, the district court granted DOE's motion for summary judgment without addressing whether Pritikin had constitutional standing to initiate her suit against DOE. It rejected citizen suit [6] jurisdiction on the ground that Pritikin could not establish a § 9659(a)(1) "requirement" or a § 9659(a)(2) "duty" which DOE had either violated or failed to perform. Alternatively, the district court determined that it did not have subject matter jurisdiction under the APA because there was neither "final agency action "nor a "definitive statement of an agency's position" for which

judicial review is authorized under *5 U.S.C. § 704.* [7]

IV. Standing

We review an order granting summary judgment de novo, Auvil v. CBS "Sixty Minutes"," *67 F.3d 816, 819 (9th Cir. 1995),* and we may affirm the district court on any ground supported by the record, *Franklin v. Terr, 201 F.3d 1098, 1100 n.2 (9th Cir. 2000).* Although the issue of standing was not raised in the district court, because it is one of jurisdiction, we may consider it for the first time on appeal. *FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 230-31, 107 L. Ed. 2d 603, 110 S. Ct. 596 (1990); Alameda Newspapers, Inc. v. City of Oakland, 95 F.3d 1406, 1411 n.5 (9th Cir. 1996).* Standing is a judicially-created doctrine --"an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defenders of Wildlife, 504 U.S. 555, 560, 119 L. Ed. 2d 351, 112 S. Ct. 2130 (1992).* "No principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies." *Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26, 37, 48 L. Ed. 2d 450, 96 S. Ct. 1917 (1976).* Standing, unlike other jurisdictional doctrines, "'focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated. '" *Id. at 38* (quoting *Flast v. Cohen, 392 U.S. 83, 99, 20 L. Ed. 2d 947, 88 S. Ct. 1942 (1968)).* To demonstrate standing, a plaintiff must (1) "have suffered an 'injury in fact' --an invasion of a legally protected interest which is (a) concrete and particularized and (b) 'actual or imminent, not 'conjectural or hypothetical; '" (2) "there must be a causal connection between the injury and the conduct complained of --the injury has to be 'fairly ... traceable to the challenged action of the defendant, and not ... the result [of] the independent action of some third party not before the court; '"and (3) "it must be 'likely' as opposed to merely 'speculative, 'that the injury will be 'redressed by a favorable decision. '" *Defenders of Wildlife, 504 U.S. at 560-61* (citations omitted) (alterations in original).

DOE does not challenge the first prong of the standing requirements and rightfully so --Pritikin's inability to receive medical screening due to ATSDR's failure to implement the Hanford medical monitoring program establishes a cognizable injury. DOE argues, however, that because Pritikin fails to show how including funding for ATSDR's medical monitoring program in its budget request would result in the program actually being carried out, she has demonstrated neither causation nor redressability, and therefore, she lacks standing. We agree that Pritikin has failed to demonstrate the second and third prongs of the constitutional standing requirements and that we therefore lack jurisdiction over her claims.

A. Causation

To meet the causation requirement, Pritikin's injury --her inability to receive medical screening --must be fairly traceable to DOE's failure to include funding for the Hanford medical monitoring program in its budget requests. It cannot be "'the result of the independent action of some third party not before the court. '" *Defenders of Wildlife, 504 U.S. at 560* (quoting *Simon, 426 U.S. at 41-42)* (alterations omitted). By claiming that DOE's failure "to fulfill its obligation to fund the Medical Monitoring Program and the Exposure Subregistry Program" has deprived her of needed medical surveillance, Pritikin's claim presupposes that a budget request for funding would necessarily result in the funding and that if the funding were provided the program would necessarily begin. Thus, even at first blush, Pritikin's standing appears weak, as her theory omits a necessary step in the causation chain --the independent decision of ATSDR, a third party not before the court, to begin the medical monitoring program.

Pritikin argues that by failing to include the medical monitoring program in its budget request, DOE did not" take such steps as may be necessary to ... eliminate or substantially mitigate the significant risk to human health." *42 U.S.C. § 9604*(i)(11). [8] According to Pritikin, this

provision imposes an affirmative duty on DOE to provide ATSDR with the funding it needs to initiate the medical monitoring program before any costs have been incurred. Although this "duty "is without support in the text of CERCLA, Pritikin argues that her inability to obtain medical screening is "directly traceable" to DOE's failure to perform it. We disagree.

In Simon, indigents and organizations of indigents claimed the Secretary of the Treasury and the Commissioner of the Internal Revenue Service issued *Revenue Ruling 69-545,* which extended tax benefits to nonprofit hospitals that offered treatment to indigents on an emergency basis only, in violation of the Internal Revenue Code of 1954 and the APA. They argued that the ruling encouraged hospitals to deny service to the individual indigents and members of the indigent organizations. *Simon, 426 U.S. at 33.* The Supreme Court disagreed, concluding that it was pure speculation as to "whether the denials of service specified in the complaint fairly can be traced to petitioners' 'encouragement' or instead result from decisions made by the hospitals without regard to the tax implications." *Id. at 42-43.* The Court found it "equally speculative whether the desired exercise of the court's remedial powers in this suit would result in the availability to [the indigents] of such services." *Id. at 43.* Because there was no evidence suggesting that the issuance of the ruling caused the hospitals to deny indigents treatment, *id. at 28,* and because "unadorned speculation will not suffice to invoke the federal judicial power[,]" the Court held that respondents lacked standing, *id. at 44.*

The need to speculate as to the causal link between the actions of the party being sued and the alleged injury arose because, like Pritikin, the Simon plaintiffs sued the wrong party: rather than suing the hospitals refusing indigents care, they sued the people responsible for promulgating the revenue ruling. Although the plaintiffs successfully alleged an injury, the Court reasoned an "injury at the hands of a hospital is insufficient by itself to establish a case or

controversy in the context of this suit, for no hospital is a defendant." *Id. at 41.* Here, Pritikin has not sued a party with the clear ability to act. Rather than suing the ATSDR, the party with the statutory power and duty to act, Pritikin has sued DOE, the party liable for "the costs of any health assessment or health effects study carried out ...." *42 U.S.C. § 9607*(a)(4)(D). Although she has sufficiently alleged that she was injured by the failure to implement a medical monitoring program at Hanford, "[an] injury at the hands of [ATSDR] is insufficient by itself to establish a case or controversy in the context of this suit, for [ATSDR] is [not] a defendant." See *Simon, 426 U.S. at 41.*

Similarly, in *Duquesne Light Co. v. United States Environmental Protection Agency, 166 F.3d 609 (3d Cir. 1999),* the independent actions of a third party, not before the court, were at issue. The Third Circuit concluded that the Duquesne Light Company lacked standing to judicially challenge the EPA's approval of Pennsylvania's state implementation of the Clean Air Act. The utility company claimed that it lost emission reduction credits (ERCs) and faced higher operation costs as a result of EPA's approval. *Duquesne, 166 F.3d at 612.* The Third Circuit held that Duquesne's injury was "manifestly the product of the independent action of a third party --Pennsylvania's Department of Environmental Protection[,]" which redefined the state implementation plan "in such a way that Duquesne may not receive ERCs for its dormant plant. " *Id. at 613.* This, in turn, reduced the number of ERCs Duquesne claimed it would have received had the less stringent requirements of federal law been applied. Because the Clean Air Act required the EPA to approve any state plan that met the minimum federal requirements, which Pennsylvania's plan did, the EPA did not have the power to change its decision or to order Pennsylvania to relax its clean air requirements. Id. Thus, the Third Circuit concluded that the EPA's approval of the Pennsylvania plan was not "fairly traceable "to Duquesne's injury. Id.

As in Duquesne, Pritikin's injury is "manifestly the product of the independent action of a third party. "Id. Although DOE is liable for "the costs of any health assessment or health effects study carried out under section 9604(i) of this title," *42 U.S.C. § 9607*(a)(4)(D), ATSDR is responsible for implementing the program once it "has determined that there is a significant increased risk of adverse health effects in humans from exposure to hazardous substances based on the results of a health assessment conducted under paragraph (6) ...." *42 U.S.C. § 9604*(i)(9). ATSDR is not required to wait for DOE's funding before beginning the Hanford medical monitoring program; it can seek an alternate source of funding. Thus, any failure to implement the medical monitoring program lies at the hands of ATSDR.

In a factually analogous decision, the Seventh Circuit held that the Area Transport did not have standing to challenge the Federal Transit Administration's (FTA) decision regarding the sanctions imposed on Mass Transportation Administration of Flint, Michigan (MTA) for simultaneously receiving federal grants and providing exclusive school bus service. *Area Transp, Inc. v. Ettinger, 219 F.3d 671, 672-74 (7th Cir. 2000).* Area Transport argued that the FTA's ruling requiring MTA to cease providing illegal school bus services if it wished to continue receiving federal grants was too lenient, and requested that the court both declare MTA ineligible to receive future grants and compel FTA to order MTA to repay the grants illegally received. *Area Transport, 219 F.3d at 672.* Area Transport argued that it was injured by continued competition with MTA, which had an unfair advantage due to its illegal appropriation of funds. Because there was no information in the record that once the FTA issued its cease and desist order, MTA was still competing with Area Transport, Area Transport could not show that imposing less harsh sanctions would improve competition between the two. *Id. at 673.* In response to Area Transport's argument that MTA would be competing with impermissibly fattened coffers, the Seventh Circuit observed "to the extent

that such an outcome requires not only that MTA react to the FTA's cease and desist order by forgoing future federal grants in favor of continuing its school bus service, but also that MTA do so successfully, this scenario is both highly speculative and dependent on uncertain actions by MTA, who is not before us." Id. Thus, the Seventh Circuit held that there was no causal connection between the FTA's imposition of less harsh sanctions and the competitive injury suffered by Area Transport. [9] Id.

Pritikin faces similar causation problems. She cannot show that DOE's failure to request funding prevented ATSDR from implementing the medical monitoring program. ATSDR could have sought alternative funding sources, like Superfund, to begin the monitoring program. Thus, Pritikin's argument that ATSDR could not institute its medical monitoring program because it did not receive funding specifically from DOE "is both highly speculative and dependent on uncertain actions by [ATSDR], who is not before us." See id.

B. Redressability

Many of the problems Pritikin encounters in establishing causation also affect her ability to demonstrate that a decision in her favor "will produce tangible, meaningful results in the real world" --or in other words --to establish that her claim is redressable. *Common Cause v. Dept. of Energy, 226 U.S. App. D.C. 266, 702 F.2d 245, 254 (D.C. Cir. 1983).* As demonstrated above, this case is "one of third-party causation" --Pritikin "seeks to change [DOE's] behavior only as a means to alter the conduct of a third party, not before the court, who is the direct source of [Pritikin's] injury." See *Common Cause, 702 F.2d at 251.* Thus, we must determine whether requiring DOE to include the Hanford medical monitoring program in its budget request will result in ATSDR's implementation of that program. We conclude that it will not.

The redressability issues here are analogous to those presented in Lujan v. Defenders of Wildlife, which set the

standard for establishing constitutional standing when challenging the actions --or inactions --of federal agencies. In Defenders of Wildlife, the plaintiffs sought both a declaratory judgment that the Secretary of the Interior's regulation, which required federal agencies to consult with him about the effect of their actions only if they would affect endangered species in the United States or on the high seas, was too geographically narrow, and an order requiring such consultation for foreign actions. *Defenders of Wildlife, 504 U.S. at 559.* Because other federal agencies were not bound by the Secretary's regulation, "the only injury in fact respondents complain of required action ... by the individual funding agencies." *Id. at 571.* Ordering the Secretary of the Interior to act would not remedy the plaintiffs' injury; thus the Court concluded that they lacked standing. *Id. at 578.*
Pritikin attempts to distinguish her case from Defenders of Wildlife on three grounds. First, Pritikin argues that ATSDR, unlike the non-party agencies involved in Defenders of Wildlife, became statutorily bound to act once it found a "significant increased risk of adverse health effects." Thus, according to Pritikin, ATSDR would be required to implement the medical monitoring program if the DOE requested and provided funding. In advancing this argument, Pritikin fails to consider one important fact: ATSDR is not bound by DOE's actions or decisions. ATSDR could choose to ignore its statutory duty and decline to implement a medical monitoring program even after DOE included funding for the program in its budget. Because ATSDR is not a party to this suit, we cannot prevent this from occurring, nor could we sanction ATSDR for statutory non-compliance if it chose not to implement the Hanford medical monitoring program. We simply cannot compel a non-party in these circumstances to act, even if it would be in conformance with a statutory duty.
Next, Pritikin argues that Defenders of Wildlife is distinguishable through comparison of the respective economic impacts on the non-party agency of the party

agency's action or inaction. Because DOE is fully liable for the costs of the medical monitoring program under CERCLA, Pritikin contends that DOE's budget request and funding will directly affect whether the medical monitoring program is initiated. By comparison, in Defenders of Wildlife, the Department of the Interior only supplied a fraction of the funding for foreign projects and therefore could not affect their outcomes by withholding funds. In advancing this argument, however, Pritikin overlooks an important fact: ATSDR could, for example, pursue other sources of funding, like Superfund, and later seek reimbursement from DOE. Such action would be fully consistent with the statute. Although DOE's decision to include medical monitoring in its budget could facilitate implementation of the program, there is nothing in the record that indicates that its decision not to include the program in its budget request prevented ATSDR from initiating the program at all. Of course, because ATSDR is not a party to this action, there is nothing in the record to indicate what effect, if any, DOE's failure to budget for the program is having on its implementation.

Lastly, Pritikin submits that she is challenging a particular government decision, whereas Defenders of Wildlife involved a challenge to a generalized level of government action. While this may be factually true, this argument misses the mark. Whether the government's challenged action is specific or general does not --without more --demonstrate that the requested relief will redress the alleged injury. As in Common Cause, Pritikin has failed to show how ordering DOE to request funding would lead to the tangible result of a Hanford medical monitoring program when only ATSDR has the power to actually initiate the program. In Common Cause, Appellants sought to force DOE to publish a final energy conservation plan for federally owned and leased buildings pursuant to *42 U.S.C. § 6361*(a)(2). DOE had published a Preliminary Plan, but the Final Plan was delayed by problems with individual agencies. *Common Cause, 702 F.2d at 248.* Appellants sought publication of the final plan to

reduce federal government energy consumption, which would alleviate the energy shortage and lower energy prices. Id. at 249. The D. C. Circuit concluded that Appellants lacked standing because they "utterly failed to indicate ... how a decree ordering publication of the Final Plan would be likely to lead to tangible additions in federal energy conservation above and beyond those currently being achieved under the regime of the Preliminary Plan." Id. at 252 (italics omitted).

That DOE is bound to act pursuant to *42 U.S.C. § 9604*(i)(11) does not meet the constitutional standing requirements. Pritikin relies on Tennessee *Valley Authority v. Hill, 437 U.S. 153, 57 L. Ed. 2d 117, 98 S. Ct. 2279 (1978)* ("TVA"), [10] which held that the Endangered Species Act was violated when an agency failed to "take such action []necessary to insure" its actions did not jeopardize an endangered species pursuant to *16 U.S.C. § 1536, id. at 188,* to establish that DOE violated § 9604(i)(11) by not taking "such steps as may be necessary to reduce such exposure and eliminate or substantially mitigate the significant risk to human health." Even if it were a necessary step for DOE to include a line item request for medical monitoring in Hanford, that responsibility alone does not provide the missing causal link between DOE's budget request and ATSDR's ability to implement the program Pritikin desires.

V. Conclusion Because Pritikin has not shown that her injury was" fairly traceable" to DOE's actions or that the relief she seeks will remedy that injury, we hold that Pritikin lacks standing to bring this suit, and we affirm the decision of the District Court. [11]

AFFIRMED.

n1 Spencer Abraham is substituted for his predecessor, Frederico Pena, as Secretary of the Department of Energy. Fed. R. App. P. 43(c)(2).
n2 The Hanford Downwinders Coalition sought injunctive relief requiring ATSDR to initiate a health surveillance program (also known as a medical monitoring program) for people exposed to the toxic substances emitted from Hanford. On appeal, we concluded that although ATSDR had a mandatory duty under *42 U.S.C. § 9604*(i)(9) to implement a medical monitoring program once it determined that "a significant increased risk of adverse health effects" existed at Hanford, we lacked jurisdiction to order such a program because the requisite determination had not yet been made. *Dowdle, 71 F.3d at 1474-75.*

n3 This transfer was announced in a memorandum from Alvin L. Alm, DOE Assistant Secretary for Environmental Management, on February 27, 1997. Because "funding this compliance program from Headquarters [was] no longer possible given the congressional budget decision with respect to the Program Direction Account[,] "the program was "moved from Headquarters to the field for funding and execution." Attached to the memorandum was a model IAG, but it is unclear from the record whether that model IAG was the same draft IAG submitted to the Richland field office by ATSDR in August 1997.
n4 The 1997 draft IAG was proposed by ATSDR after Richland had assumed responsibility for funding the Hanford program. All previous IAGs were entered into between ATSDR and DOE Headquarters.
n5 *42 U.S.C. § § 9601*-9675, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA, Pub. L. No. 99-499, 100 Stat. 1613) (1986).
n6 *42 U.S.C. § 9659* provides in relevant part:

Authority to bring civil suits

any person may commence a civil action on his own behalf -

(1) against any person (including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any standard, regulation, condition, requirement, or order which has become effective pursuant to this chapter (including any provision of an agreement under section 9620 of this title, relating to Federal facilities); or

(2) against the President or any other officer of the United States (including the Administrator of the Environmental Protection Agency and the administrator of the ATSDR) where there is alleged a failure of the President or of such other officer to per-form any act or duty under this chapter, including an act or duty under section 9620 of this title (relating to Federal facilities), which is not discretionary with the President or such other officer.

(c) Relief

The district court shall have jurisdiction in actions brought under subsection (a)(1) of this section to enforce the standard, regulation, condition, requirement, or order concerned (including any provision of an agreement under section 9620 of this title), to order such action as may be necessary to correct the violation, and to impose any civil penalty provided for the violation. The district court shall have jurisdiction in actions brought under sub-section (a)(2) of this section to order the President or other officer to perform the act or duty concerned.

n7 *5 U.S.C. § 704* provides:

Agency action made reviewable by statute and final agency

action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

n8 *42 U.S.C. 9604*(i)(11) requires the President to take "such steps," but the President delegated this responsibility to the executive department heads and granted them the authority to carry out the functions of Section 104. Executive Order 12580 section 2(k).

n9 The court assumed, without deciding, that Area Transport successfully alleged a continuing injury. *Area Transport, 219 F.3d at 673.*

n10 TVA did not involve a standing challenge. In that case, a regional association of biological scientists, a Tennessee conservation group, and individuals citizens and users of the Little Tennessee Valley area sought an injunction prohibiting "the operation of a virtually completed federal dam" because, "pursuant to authority vested in him by Congress, the Secretary of the Interior []determined that operation of the dam would eradicate an endangered species." *TVA, 437 U.S. at 156, 161 n.10.* The Court reached the merits of the case and enjoined the completion of the dam.

n11 We do not address a question not before this court: whether Pritikin would have standing if ATSDR were named as a party in this action.

CASE NUMBER: CY-98-3049-EFS

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WASHINGTON

TRISHA T. PRITIKIN, Plaintiff,

v.

UNITED STATES DEPARTMENT OF ENERGY; JOHN D. WAGONER, in his official capacity as Manager of the U.S. Department of Energy Richland Operations; and FEDERICO PENA, in his official capacity as Secretary of the U.S. Department of Energy, Defendants.

March 31, 1999, Decided

March 31, 1999, Filed

COUNSEL:
For TRISHA T PRITIKIN, plaintiff: Tom H Foulds, Seattle, WA.

For DEPARTMENT OF ENERGY, JOHN D WAGONER, FREDERICO PENA, defendants: Pamela Jean DeRusha, U S Attorney's Office, Spokane, WA.

For DEPARTMENT OF ENERGY, JOHN D WAGONER, FREDERICO PENA, defendants: Yvette M Wilkerson-Barron, US Department of Justice, Washington, DC.

For DEPARTMENT OF ENERGY, JOHN D WAGONER, FREDERICO PENA, defendants: Robert H Foster, US Dept of Justice, Environment & Natural Resources, Denver, CO.

JUDGES:
EDWARD F. SHEA, United States District Judge.

OPINIONBY:
EDWARD F. SHEA

OPINION:
ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
Before the Court is Defendants' Motion to Dismiss, or Alternatively for Summary Judgment (Ct. Rec. 12). The Court heard oral argument on October 7, 1998, in Spokane. The Plaintiff was represented by Tom Foulds, and the Defendants were represented by Pamela DeRusha of the U.S. Attorney's Office, and Yvette Wilkerson-Barron and Robert Foster of the U.S. Department of Justice, with Mr. Foster arguing.
I. BACKGROUND
The Plaintiff, Trisha Pritikin, has filed a "Complaint for Declaratory Relief and for Order Compelling the Performance of Non Discretionary Duties" pursuant to the Citizen Suit Provisions of *42 U.S.C. § 9659*(a)(1)&(2) and the Administrative Procedures Act, *5 U.S.C. § § 701*-04. Ms. Pritikin alleges that the Department of Energy ("DOE") has failed to fulfill its obligation to fund the Medical Monitoring Program and the Exposure Subregistry Program deemed necessary by the Agency for Toxic Substances and Disease Registry ("ATSDR") in 1997. (Ct. Rec. 1.)
As the basis for this Court's jurisdiction, Ms. Pritikin cites *42 U.S.C. § 9659*(c), the citizen suit provision of CERCLA, and *28 U.S.C. § 1361*, which provides an action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the claimant. Ms. Pritikin does not cite the Declaratory Judgment Act, which empowers a court in a case of actual controversy within its jurisdiction to declare the rights of interested

parties seeking such a declaration. *See 28 U.S.C. § 2201* (1996).

Instead, Ms. Pritikin seeks a declaratory judgment that DOE is liable for the costs of the medical monitoring program under *42 U.S.C. § 9613*(g)(2) that will be binding on any subsequent action to recover further response costs or damages. She also seeks an order compelling the Defendants to make budget requests for the medical monitoring program and obtain the funding by "reprogramming budget items committed by them to other programs," and to require the Defendants to disclose to Congress their failure to provide such funding compliance. (Ct. Rec. 1.)

By way of background, DOE and ATSDR have been involved in lawsuits related to radioactive emissions at Hanford's Plutonium Production facilities. In 1994, ATSDR decided to initiate various procedures necessary to establish the criteria for a medical monitoring program. In 1997, ATSDR determined that there was a need for a medical monitoring program and disease registry at Hanford.

Ms. Pritikin asserts that she was exposed to Hanford emissions as a resident of the area and suffered considerable damage to her thyroid gland. As an individual allegedly damaged by the emission, she believes that she has the right to and a need for the ATSDR medical monitoring program. Since ATSDR made its announcement that a medical monitoring program was necessary, ATSDR and DOE have engaged in exchanges of communications regarding the possible funding of that program. There has been no resolution of that funding issue. Ms. Pritikin now seeks to employ the power of the federal court to order such actions as will result in the funding of the ATSDR recommended program.

The Defendants counter that the Plaintiff's complaint should be dismissed for lack of subject matter jurisdiction because *42 U.S.C. § 9607*(a)(4)(D) creates no private right of action against DOE. Additionally, the Defendants allege that DOE has taken appropriate steps to file the required reports and

budget requests and therefore the remaining claims for mandamus should be dismissed as moot. This Court has jurisdiction under *28 U.S.C. § 1331* and *28 U.S.C. § 1361.* After consideration of the materials submitted by the parties and oral argument, this Court concludes that CERCLA does not give Ms. Pritikin a right to sue to recover § 9607(a)(4)(D) costs nor a right to a declaratory judgment that DOE is liable for future costs for the medical monitoring program which ATSDR has concluded is necessary. [1] Accordingly, the Court lacks subject matter jurisdiction and grants the Defendants' Motion for Summary Judgment. [2]

II. SUMMARY JUDGMENT STANDARD

Summary judgment is properly granted when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c). When considering a motion for summary judgment, a court may not weigh evidence or determine the truth of a matter. *See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986).* Rather, the Court's function is strictly to determine whether there is a genuine issue for trial. *See id.*

The moving party has the initial burden of demonstrating the absence of a genuine issue of material fact. *See Celotex Corp. v. Catrett, 477 U.S. 317, 323, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986).* Once that initial burden has been met, the party opposing summary judgment must set forth specific facts showing that there is a genuine issue for trial or judgment may be granted as a matter of law. *See Anderson, 477 U.S. at 248.* This requires that the party present evidence or identify in the record evidence sufficient to establish the existence of a material issue of fact. *See Celotex, 477 U.S. at 322-23.* Failure to do so may result in the entry of summary judgment if the party requesting summary judgment is otherwise entitled to judgment as a matter of law. *See Anderson v.*

Angelone, 86 F.3d 932, 934 (9th Cir. 1996).

III. DISCUSSION

This district is not unfamiliar with litigation concerning the continuing efforts to clean up hazardous waste at the Hanford Nuclear Reservation ("Hanford") in Richland, Washington. [3] Two cases in this district have dealt with different but somewhat related elaims to the one at issue. Those cases provide helpful background material on the issue of a citizen's cause of action to recover the costs of medical monitoring programs under CERCLA.

In *Durfey v. E.I. DuPont de Nemours Co.*, private citizens sued private companies operating at Hanford. *See 59 F.3d 121 (9th Cir. 1995).* The Plaintiffs claimed a common law right to sue those private companies for the cost of medical monitoring for conditions allegedly caused by a release of radioactive substances in Eastern Washington some years earlier. *See Durfey, 59 F.3d 121 at 123.* On appeal from a district court decision holding the common law medical monitoring claims were barred by *42 U.S.C. § 9613*(h) as challenges to ongoing federal agency "removal" or "remedial" actions, the Ninth Circuit reversed finding that medical monitoring costs were not "response costs" under CERCLA.

This court, relying on the Tenth Circuit analysis in Daigle [4], reasoned that:

The context in which the "monitoring" and "health and welfare" language appears is directed at containing and cleaning up hazardous substance releases . . . The specific examples in § 9601(23) are all designed to prevent or mitigate damage to public health by preventing contact between the spreading contaminants and the public. Monitoring long-term health has nothing to do with preventing such contact. In addition, this court reviewed the legislative history behind CERCLA and found that "Congress intentionally deleted all personal rights to recovery of

medical expenses from CERCLA," and that ATSDR activities are reimbursed separately from the payment of "response" costs.

Durfey, 59 F.3d at 125 (quoting *Price v. United States Navy, 39 F.3d 1011, 1016-17 (9th Cir. 1994)*, and *Daigle, 972 F.2d 1527 at 1536-37).*

The court concluded that claims for costs of medical monitoring programs initiated and conducted by citizens independently of any CERCLA cleanup efforts were not "costs of response" as that term is used in *42 U.S.C. § 9607*(a)(4)(B). As such, those claims were not barred by CERCLA § 113(h). Consequently, the court held that the district court had jurisdiction to hear those citizen claims for costs of medical monitoring programs initiated and conducted independently of any CERCLA cleanup effort. [5] Later that same year in *Hanford Downwinders Coalition, Inc. v. Dowdle*, the Ninth Circuit again faced issues related to CERCLA medical monitoring programs. *See 71 F.3d 1469 (9th Cir. 1995). Dowdle* contains a lengthy description of the creation of ATSDR as part of CERCLA and provides an excellent analysis of the CERCLA provisions that relate to ATSDR. In that case, a citizens group brought an action seeking injunctive relief requiring ATSDR to begin a health surveillance program for populations exposed to radiation from Hanford. *See id. at 1471-73.* "The plaintiffs alleged that the ATSDR has a mandatory duty under CERCLA § 9604(i)(9) to begin a health surveillance program in the Hanford region. The requested injunction would order the ATSDR to initiate § 9604(i)(9) health surveillance activity, including medical testing and monitoring of individuals exposed to releases of radioactive iodine." *Id. at 1473.* The district court dismissed the action citing *42 U.S.C. § 9613*(h) which provides in pertinent part:

No Federal court shall have jurisdiction under federal law

other than under section 1332 of Title 28 . . . or under State law which is applicable or relevant and appropriate under section 9621 of this title (relating to clean up standards) to review any challenges to removal or remedial actions selected under section 9604.

42 U.S.C. § 9613(h) (1996); *see Dowdle, 71 F.3d at 1474.* That provision "prevents Federal courts from exercising jurisdiction over legal challenges to ongoing CERCLA 'removal' or 'remedial' activity." *Dowdle, 71 F.3d at 1474* (emphasis added).

Plaintiffs in *Dowdle* argued that various provisions of CERCLA related to the powers and responsibilities of ATSDR enabled the court to order ATSDR to initiate a health surveillance program. The court disagreed finding that ATSDR's role in the cleanup was ongoing and stating, "until ATSDR makes a § 9604(i)(7)(B)(9) determination, the decision to begin a health surveillance program lies within its discretion. CERCLA's Timing of Review provision [§ 9613(h)] prevents federal courts from interfering with that discretion." *Id. at 1483.* After a lengthy discussion, the court opined, "we hold that the clear and extensive congressional efforts to integrate ATSDR health assessment and surveillance action into NPL cleanups support the conclusion that the activities at issue in this case fall within the scope of § 9613(h)'s jurisdictional proscription." *Id. at 1482.*

The *Dowdle* decision is informative regarding the issues in this case. In *Dowdle*, the court held that the plaintiffs' action was barred because ATSDR had not yet completed its study to determine whether or not a health surveillance program was necessary. Pursuant to *42 U.S.C. § 9604*(i)(9)(A)&(B), a program once initiated must include both periodic medical testing to screen the exposed population for disease and a mechanism to refer for treatment anyone who needs medical attention:

Where the Administrator of ATSDR has determined that

there is a significant increased risk of adverse health effects in humans from exposure to hazardous substances based on the results of a health assessment conducted under paragraph (6), an epidemiologic study conducted under paragraph (7), or an exposure registry that has been established under paragraph (8), and the Administrator of ATSDR has determined that such exposure is the result of a release from a facility, the Administrator of ATSDR shall initiate a health surveillance program for such population. This program shall include but not be limited to--

(A) periodic medical testing where appropriate of population subgroups to screen for diseases for which the population or subgroup is at significant increased risk; and

(B) a mechanism to refer for treatment those individuals within such population who are screened positive for such diseases.

42 U.S.C. § 9604(i)(9)(A)&(B) (1996).

In 1997, ATSDR reached a determination under § 9604(i)(7)(B)(9) that a health surveillance program must be initiated. (Ct. Rec. 15.) Ms. Pritikin's claim against DOE is based on the decision of ATSDR that a health surveillance program is necessary per *42 U.S.C. § 9604*(i)(9)(A)(B). The claims Ms. Pritikin advances here are different from the claims of the *Durfey* plaintiffs. The court in *Durfey* held the plaintiffs could bring claims for the costs of privately initiated and conducted medical monitoring programs against corporate defendants who were alleged "responsible parties" as that term is used in CERCLA. By comparison, Ms. Pritikin asks this Court to declare DOE liable for the costs of past ATSDR assessments and to declare DOE liable for future costs of the ATSDR medical monitoring program. Unlike the *Durfey* plaintiffs, Ms. Pritikin has not advanced costs for a private medical monitoring program but asserts a cause of action to recover costs ATSDR has expended or may expend in the future. Ms. Pritikin also asserts a cause of action different from the *Dowdle* plaintiffs. The plaintiffs in *Dowdle*

brought an injunctive action against ATSDR seeking to force it to conduct the program which it has now concluded is necessary, while Ms. Pritikin has brought suit against DOE and its administrator, not ATSDR.

As a partial basis for her request, Ms. Pritikin relies upon *42 U.S.C. § 9659*(a)(1)&(2) for the declaratory relief she seeks. That section provides criteria for the citizen suit provisions of CERCLA:

Except as provided in subsections (d) and (e) of this section and in section 9613(h) of this title (relating to timing of judicial review), any person may commence a civil action on his own behalf--

(1) against any person (including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any standard, regulation, condition, requirement, or order which has become effective pursuant to this chapter (including any provision of an agreement under section 9620 of this title, relating to Federal facilities); or

(2) against the President or any other officer of the United States (including the Administrator of the Environmental Protection Agency and the Administrator of the ATSDR) where there is alleged a failure of the President or of such other officer to perform any act or duty under this chapter, including an act or duty under section 9620 of this title (relating to Federal facilities), which is not discretionary with the President or such other officer.

. . . .

(c) Relief

The district court shall have jurisdiction in actions brought under subsection (a)(1) of this section to enforce the standard, regulation, condition, requirement, or order concerned

(including any provision of an agreement under section 9620 of this title), to order such action as may be necessary to correct the violation, and to impose any civil penalty provided for the violation. The district court shall have jurisdiction in actions brought under subsection (a)(2) of this section to order the President or other officer to perform the act or duty concerned.

42 U.S.C. § 9659 (1996).

Ms. Pritikin argues that the "duty" and "requirement" enforceable under this provision arise from DOE's liability for the costs incurred by ATSDR for medical monitoring programs to be carried out as provided in § 9607(a)(4)(D). In her complaint, Ms. Pritikin asserts that "the [DOE] has failed to fulfill its obligation to fund the medical monitoring Program and the Exposure Subregistry Program deemed necessary by the [ATSDR]." (Ct. Rec. 1, P1.) Ms. Pritikin further states,

Since the DOE owned the Hanford facility which emitted the hazardous substances which created the significant increased risk of adverse health effects, the DOE is liable under *42 U.S.C. § 9607*(a)(2) and is specifically liable under § 9607(a)(4), subsection (D) for the costs of any health assessment or health effects study carried out by the ATSDR under section 9604(i). Thus the DOE is liable for the costs of funding the ATSDR medical monitoring and disease registry programs.

(Ct. Rec. 1, P25.) Ms. Pritikin contends that given this alleged liability on the part of DOE, § 9607(a)(4)(D) together with § 9613 (g)(2) allow her to seek a declaratory judgment on DOE liability for future costs of such programs. No cases cited by the Plaintiff support that position, [6] nor has the Court found any other authority in support of her contentions.

Plaintiff believes that § 9607(a)(4)(D) creates the §

9659(a)(1) "requirement" or a § 9659(a)(2) "duty". Section 9607 liability, provides:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section--

. . . .

(4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for--

. . . .

(D) the costs of any health assessment or health effects study carried out under section 9604(i) of this title.

42 U.S.C. § 9607(a) (1996).

Ms. Pritikin asserts that since this provision makes DOE liable as a "responsible party" for the medical monitoring program which ATSDR has determined must be initiated, there is, therefore, a "requirement" or "duty" which she can enforce under § 9659 citizen suit provisions. This Court disagrees. Section 9607(a)(4)(D) does not give Ms. Pritikin a cause of action under § 9659 to establish the liability of DOE for the cost of any health assessment or health effects study carried out by ATSDR under § 9604(i). That subsection was added to CERCLA at the time of the 1986 SARA amendments and provides a government cause of action to recover § 9604(i) ATSDR health assessment costs separate from a cause of action for response costs. *See Daigle, 972 F.2d at 1537.* That view was shared by the court in *Durfey* when it noted, "the government is able to recover costs

incurred by the ATSDR under a separate cause of action." *59 F.3d at 125.* [7] As discussed earlier, by its very terms, § 9613(g) requires a suit to recover § 9607 costs. It is only in such an action that the court would have the power to declare future cost liability of the parties to that action. *See* § 9613(g)(2).

Therefore, it is this Court's ruling that § 9607(a)(4)(D) cannot be read together with § 9659(a)(1)&(2) to permit Ms. Pritikin to seek declaratory judgment on liability pursuant to *42 U.S.C. § 9613*(g)(2). § 9607(a)(4)(D) enables ATSDR to bring such an action to recover the costs of health surveillance programs, not private citizens. [8] With no cause of action existing under § 9607(a)(4)(D) and no violation of a CERCLA requirement, Ms. Pritikin's citizen suit under § 9659 cannot be brought. *See 42 U.S.C. § 9613*(h)(4). Thus, this Court has no jurisdiction to enter a declaratory judgment and afford Ms. Pritikin the relief she seeks.

A. THE IMPACT OF *42 U.S.C. § 9620*

Ms. Pritikin asserts that under § 9620(e) DOE is "required" to enter into interagency agreements ("IAG") to fund ATSDR's public health activities at DOE sites. Plaintiff specifically cites § 9620(e)(2). However, the term "The Administrator" as used therein refers to the administrator of the Environmental Protection Agency, not the administrator of the ATSDR. *See 42 U.S.C. § 9601*(2) ("The term 'Administrator' means the Administrator of the United States Environmental Protection Agency."). The documents attached to the complaint and the various pleadings submitted by the parties in connection with the Defendants' motions record the exchange between DOE and ATSDR regarding the funding of ATSDR's public health activities. ATSDR and DOE did enter into a "Memorandum of Understanding" in 1992, (Ct. Rec. 13, Ex. B) as well as a number of IAG's thereafter (Ct. Rec. 17, Ex. F) which provided advanced funding of ATSDR's public health activities.

Ms. Pritikin's position is that § 9620(e) "requires" DOE to enter into IAG's with ATSDR. No authority is cited by

plaintiff in support of her position. A careful reading of § 9620 persuades this Court that there are many complex issues between governmental agencies such as ATSDR and DOE regarding their respective responsibilities and duties as well as the necessary budgeting to carry out those responsibilities, many of which require congressional approval. This Court does not believe that § 9620 provides Ms. Pritikin with a basis for asserting a § 9659(a)(1) or (2) cause of action against DOE.

B. THE ADMINISTRATIVE PROCEDURES ACT

As an alternative to the CERCLA statutory approach, Ms. Pritikin believes that the DOE actions amount to final agency action subject to the Administrative Procedures Act ("APA"). *See 5 U.S.C. § 704.* The APA authorizes judicial review of agency actions which are reviewable by statutory language as well as final agency action for which there is no other remedy in court. *See id.* These elements must be present for the court to have subject matter jurisdiction. *See FTC v. Standard Oil Co. of Calif., 449 U.S. 232, 248, 66 L. Ed. 2d 416, 101 S. Ct. 488 (1980).* Courts must consider a number of factors in determining whether an agency act is final for purposes of review, including whether the action challenged is a "definitive statement of an agency's position." *See Mt. Adams Veneer Co. v. United States, 896 F.2d 339, 343 (9th Cir. 1990).*

The documents submitted by the Defendants persuade this Court that DOE has not engaged in "final agency action" as that term is utilized under the APA, nor has it given a "definitive statement of an agency's position" which would allow judicial review. (Ct. Rec. 13, Ex. A, B, & C.) Additionally, documents submitted to this Court reflect that DOE has filed the necessary § 9620 reports and has officially informed Congress of this ATSDR funding issue and sought reprogramming of funds for ATSDR activities. Final action subjecting the decisions of DOE to judicial review has not yet been taken and therefore there is no subject matter jurisdiction under *5 U.S.C. § 704.*

Based on the foregoing analysis, the Court grants the Defendants' Motion for Summary Judgment. Accordingly, IT IS HEREBY ORDERED:

1. Defendants' Motion for Summary Judgment (Ct. Rec. 12) is GRANTED.
2. All other pending motions are DENIED as moot.
3. Plaintiff's Complaint is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED. The District Court Executive is directed to enter this order, prepare a Judgment accordingly, provide copies to counsel, and close this file.

DATED this 31st day of March, 1999.

EDWARD F. SHEA
United States District Judge

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT IS GRANTED; PLAINTIFF'S COMPLAINT IS DISMISSED WITH PREJUDICE.

March 31, 1999
Date

n1 Plaintiff has not named ATSDR as a defendant even though *42 U.S.C. § 9604*(i) mandates that the Administrator of ATSDR shall initiate a health surveillance program for a population exposed to a release from a facility when ATSDR has determined that there is a significant increased risk of adverse health affects in humans from exposure to hazardous substances based on ATSDR health assessments and studies. ATSDR made such a determination in 1997. *Cf. Hanford Downwinders Coalition, Inc. v. Dowdle, 71 F.3d 1469 (9th*

Cir. 1995).

n2 In its ruling, the Court considered materials outside of the pleadings in deciding Defendants' Motions. As such, summary judgment standard must be applied. *See Anderson v. Angelone, 86 F.3d 932, 934 (9th Cir. 1996).*

n3 *See In re Hanford Nuclear Reservation Litigation, 780 F. Supp. 1551 (E.D. Wash. 1991).*

n4 *Daigle v. Shell Oil Co.* was a toxic tort case arising from the cleanup at Rocky Mountain arsenal, a CERCLA site in Colorado. *See 972 F.2d 1527 (10th Cir. 1992).* In part, the plaintiffs brought CERCLA medical monitoring claims pursuant to *42 U.S.C. § 9607*(a)(4)(B). That subsection of CERCLA makes a person who operates the site from which a release of hazardous substances has occurred liable for any other necessary costs of response incurred by any other person consistent with the national contingency plan. The court in *Daigle* held that the medical monitoring which the plaintiffs sought was not recoverable under CERCLA § 107(a). *See id. at 1537.* It did find, however, "Section 107(a), the liability provision with which we started our analysis above, provides a government cause of action to recover § 104(i) ATSDR health assessment costs separately from the cause of action for response costs." *Id.* (emphasis added).

n5 *Durfey* was then remanded to the district court where it is pending.

n6 *Pinole Point Properties, Inc. v. Bethlehem Steel Corp., 596 F. Supp. 283 (N.D. Cal. 1984),* and cases cited therein do not hold that a private citizen can bring an action to recover costs expended by the government.

n7 Congress deleted all personal rights to recovery of medical expense from CERCLA. *See Durfey, 59 F.3d at 125,* and *Dowdle, 71 F.3d at 1479.*

n8 Since ATSDR is not a defendant, the Court offers no opinion on the correctness of the government's interpretation of *Heckler v. Chaney, 470 U.S. 821, 105 S. Ct. 1649, 84 L. Ed. 2d 714 (1985).* (Ct. Rec. 13.)

No. 99-35581
District Court No. CY-98-3049-EFS
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

TRISHA T. PRITIKIN,
Plaintiff-Appellant,

v.

DEPARTMENT OF ENERGY, JOHN D. WAGONER, in his official capacity as manager of DOE Richland Operations, and SPENCER ABRAHAM, [1] in his official capacity as Secretary of the US DOE,
Defendants-Appellees.

Filed September 6, 2001

ORDER

Before: REINHARDT, WARDLAW, and GOULD Circuit Judges.

The panel has voted to deny appellant's petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for en banc and no active judge has requested a vote on whether to rehear the matter en banc.
Fed. R. App. P. 35.

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

Footnote
[1] Spencer Abraham is substituted for his predecessor, Frederico Pena, as Secretary of the Department of Energy. Fed. R. App. P. 43(c)(2).

United States Code
TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 103 - COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY
SUBCHAPTER I - HAZARDOUS SUBSTANCES RELEASES, LIABILITY, COMPENSATION
Section 9620. Federal facilities

(a) Application of chapter to Federal Government

(1) In general

Each department, agency, and instrumentality of the United States (including the executive, legislative, and judicial branches of government) shall be subject to, and comply with,this chapter in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity,including liability under section 9607 of this title. Nothing in this section shall be construed to affect the liability of any person or entity under sections 9606 and 9607 of this title.

(2) Application of requirements to Federal facilities

All guidelines, rules, regulations, and criteria which are applicable to preliminary assessments carried out under this chapter for facilities at which hazardous substances are located, applicable to evaluations of such facilities under the National Contingency Plan, applicable to inclusion on the National Priorities List, or applicable to remedial actions at such facilities shall also be applicable to facilities which are owned or operated by a department, agency, or instrumentality of the United States in the same manner and to the extent as such guidelines, rules, regulations, and criteria are applicable to other facilities. No department, agency, or instrumentality of the United States may adopt or utilize any such guidelines, rules, regulations, or criteria which are inconsistent with the guidelines, rules, regulations, and criteria established by the Administrator under this chapter.

(3) Exceptions

This subsection shall not apply to the extent otherwise provided in this section with respect to applicable time periods. This subsection shall also not apply to any requirements relating to bonding, insurance, or financial responsibility. Nothing in this chapter shall be construed to require a State to comply with section 9604(c)(3) of this title in the case of a facility which is owned or operated by any department, agency, or instrumentality of the United States.

(4) State laws

State laws concerning removal and remedial action, including State laws regarding enforcement, shall apply to removal and remedial action at facilities owned or operated by a department, agency, or instrumentality of the United States or facilities that are the subject of a deferral under subsection (h)(3)(C) of this section when such facilities are not included on the National Priorities List. The preceding sentence shall not apply to the extent a State law would apply any standard or requirement to such facilities which is more stringent than the standards and requirements applicable to facilities which are not owned or operated by any such department, agency, or instrumentality.

(b) Notice

Each department, agency, and instrumentality of the United States shall add to the inventory of Federal agency hazardous waste facilities required to be submitted under section 3016 of the Solid Waste Disposal Act (42 U.S.C. 6937) (in addition to the information required under section 3016(a)(3) of such Act (42 U.S.C. 6937(a)(3))) information on contamination from each facility owned or operated by the department, agency, or instrumentality if such contamination affects contiguous or adjacent property owned by the department, agency, or instrumentality or by any other person, including a description of the monitoring data obtained.

(c) Federal Agency Hazardous Waste Compliance Docket

The Administrator shall establish a special Federal Agency Hazardous Waste Compliance Docket (hereinafter in

this section referred to as the "docket") which shall contain each of the following:

(1) All information submitted under section 3016 of the Solid Waste Disposal Act (42 U.S.C. 6937) and subsection (b) of this section regarding any Federal facility and notice of each subsequent action taken under this chapter with respect to the facility.

(2) Information submitted by each department, agency, or instrumentality of the United States under section 3005 or 3010 of such Act (42 U.S.C. 6925, 6930).

(3) Information submitted by the department, agency, or instrumentality under section 9603 of this title.

The docket shall be available for public inspection at reasonable times. Six months after establishment of the docket and every 6 months thereafter, the Administrator shall publish in the Federal Register a list of the Federal facilities which have been included in the docket during the immediately preceding 6-month period. Such publication shall also indicate where in the appropriate regional office of the Environmental Protection Agency additional information may be obtained with respect to any facility on the docket. The Administrator shall establish a program to provide information to the public with respect to facilities which are included in the docket under this subsection.

(d) Assessment and evaluation

(1) In general

The Administrator shall take steps to assure that a preliminary assessment is conducted for each facility on the docket.

Following such preliminary assessment, the Administrator shall, where appropriate -

(A) evaluate such facilities in accordance with the criteria established in accordance with section 9605 of this title under the National Contingency Plan for determining priorities among releases; and

(B) include such facilities on the National Priorities List maintained under such plan if the facility meets such

criteria.

(2) Application of criteria

(A) In general

Subject to subparagraph (B), the criteria referred to in paragraph (1) shall be applied in the same manner as the criteria are applied to facilities that are owned or operated by persons other than the United States.

(B) Response under other law

It shall be an appropriate factor to be taken into consideration for the purposes of section 9605(a)(8)(A) of this title that the head of the department, agency, or instrumentality that owns or operates a facility has arranged with the Administrator or appropriate State authorities to respond appropriately, under authority of a law other than this chapter, to a release or threatened release of a hazardous substance.

(3) Completion

Evaluation and listing under this subsection shall be completed in accordance with a reasonable schedule established by the Administrator.

(e) Required action by department

(1) RI/FS

Not later than 6 months after the inclusion of any facility on the National Priorities List, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator and appropriate State authorities, commence a remedial investigation and feasibility study for such facility. In the case of any facility which is listed on such list before October 17, 1986, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator and appropriate State authorities, commence such an investigation and study for such facility within one year after October 17, 1986. The Administrator and appropriate State authorities shall publish a timetable and deadlines for expeditious completion of such investigation and study.

(2) Commencement of remedial action; interagency agreement The Administrator shall review the results of each investigation and study conducted as provided in paragraph (1). Within 180 days thereafter, the head of the department, agency, or instrumentality concerned shall enter into an interagency agreement with the Administrator for the expeditious completion by such department, agency, or instrumentality of all necessary remedial action at such facility. Substantial continuous physical onsite remedial action shall be commenced at each facility not later than 15 months after completion of the investigation and study. All such interagency agreements, including review of alternative remedial action plans and selection of remedial action, shall comply with the public participation requirements of section 9617 of this title.

(3) Completion of remedial actions

Remedial actions at facilities subject to interagency agreements under this section shall be completed as expeditiously as practicable. Each agency shall include in its annual budget submissions to the Congress a review of alternative agency funding which could be used to provide for the costs of remedial action. The budget submission shall also include a statement of the hazard posed by the facility to human health, welfare, and the environment and identify the specific consequences of failure to begin and complete remedial action.

(4) Contents of agreement

Each interagency agreement under this subsection shall include, but shall not be limited to, each of the following:

(A) A review of alternative remedial actions and selection of a remedial action by the head of the relevant department, agency, or instrumentality and the Administrator or, if unable to reach agreement on selection of a remedial action, selection by the Administrator.

(B) A schedule for the completion of each such remedial action.

(C) Arrangements for long-term operation and

maintenance of the facility.

(5) Annual report

Each department, agency, or instrumentality responsible for compliance with this section shall furnish an annual report to the Congress concerning its progress in implementing the requirements of this section. Such reports shall include, but shall not be limited to, each of the following items:

(A) A report on the progress in reaching interagency agreements under this section.

(B) The specific cost estimates and budgetary proposals involved in each interagency agreement.

(C) A brief summary of the public comments regarding each proposed interagency agreement.

(D) A description of the instances in which no agreement was reached.

(E) A report on progress in conducting investigations and studies under paragraph (1).

(F) A report on progress in conducting remedial actions.

(G) A report on progress in conducting remedial action at facilities which are not listed on the National Priorities List. With respect to instances in which no agreement was reached within the required time period, the department, agency, or instrumentality filing the report under this paragraph shall include in such report an explanation of the reasons why no agreement was reached. The annual report required by this paragraph shall also contain a detailed description on a State-by-State basis of the status of each facility subject to this section, including a description of the hazard presented by each facility, plans and schedules for initiating and completing response action, enforcement status (where appropriate), and an explanation of any postponements or failure to complete response action. Such reports shall also be submitted to the affected States.

(6) Settlements with other parties

If the Administrator, in consultation with the head of the

relevant department, agency, or instrumentality of the United States, determines that remedial investigations and feasibility studies or remedial action will be done properly at the Federal facility by another potentially responsible party within the deadlines provided in paragraphs (1), (2), and (3) of this subsection, the Administrator may enter into an agreement with such party under section 9622 of this title (relating to settlements). Following approval by the Attorney General of any such agreement relating to a remedial action, the agreement shall be entered in the appropriate United States district court as a consent decree under section 9606 of this title.

(f) State and local participation

The Administrator and each department, agency, or instrumentality responsible for compliance with this section shall afford to relevant State and local officials the opportunity to participate in the planning and selection of the remedial action, including but not limited to the review of all applicable data as it becomes available and the development of studies, reports, and action plans. In the case of State officials, the opportunity to participate shall be provided in accordance with section 9621 of this title.

(g) Transfer of authorities

Except for authorities which are delegated by the Administrator to an officer or employee of the Environmental Protection Agency, no authority vested in the Administrator under this section may be transferred, by executive order of the President or otherwise, to any other officer or employee of the United States or to any other person.

(h) Property transferred by Federal agencies

(1) Notice

After the last day of the 6-month period beginning on the effective date of regulations under paragraph (2) of this subsection, whenever any department, agency, or instrumentality of the United States enters into any contract for the sale or other transfer of real property which is owned by the United States and on which any hazardous substance

was stored for one year or more, known to have been released, or disposed of, the head of such department, agency, or instrumentality shall include in such contract notice of the type and quantity of such hazardous substance and notice of the time at which such storage, release, or disposal took place, to the extent such information is available on the basis of a complete search of agency files.

(2) Form of notice; regulations

Notice under this subsection shall be provided in such form and manner as may be provided in regulations promulgated by the Administrator. As promptly as practicable after October 17, 1986, but not later than 18 months after October 17, 1986, and after consultation with the Administrator of the General Services Administration, the Administrator shall promulgate regulations regarding the notice required to be provided under this subsection.

(3) Contents of certain deeds

(A) In general

After the last day of the 6-month period beginning on the effective date of regulations under paragraph (2) of this subsection, in the case of any real property owned by the United States on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, each deed entered into for the transfer of such property by the United States to any other person or entity shall contain -

(i) to the extent such information is available on the basis of a complete search of agency files -

(I) a notice of the type and quantity of such hazardous substances,

(II) notice of the time at which such storage, release, or disposal took place, and

(III) a description of the remedial action taken, if any;

(ii) a covenant warranting that -

(I) all remedial action necessary to protect human health and the environment with respect to any such

substance remaining on the property has been taken before the date of such transfer, and

(II) any additional remedial action found to be necessary after the date of such transfer shall be conducted by the United States; and

(iii) a clause granting the United States access to the property in any case in which remedial action or corrective action is found to be necessary after the date of such transfer.

(B) Covenant requirements

For purposes of subparagraphs (A)(ii)(I) and (C)(iii), all remedial action described in such subparagraph has been taken if the construction and installation of an approved remedial design has been completed, and the remedy has been demonstrated to the Administrator to be operating properly and successfully. The carrying out of long-term pumping and treating, or operation and maintenance, after the remedy has been demonstrated to the Administrator to be operating properly and successfully does not preclude the transfer of the property. The requirements of subparagraph (A)(ii) shall not apply in any case in which the person or entity to whom the real property is transferred is a potentially responsible party with respect to such property. The requirements of subparagraph (A)(ii) shall not apply in any case in which the transfer of the property occurs or has occurred by means of a lease, without regard to whether the lessee has agreed to purchase the property or whether the duration of the lease is longer than 55 years. In the case of a lease entered into after September 30, 1995, with respect to real property located at an installation approved for closure or realignment under a base closure law, the agency leasing the property, in consultation with the Administrator, shall determine before leasing the property that the property is suitable for lease, that the uses contemplated for the lease are consistent with protection of human health and the environment, and that there are adequate assurances that the United States will take all remedial action referred to in

subparagraph (A)(ii) that has not been taken on the date of the lease.

(C) Deferral

(i) In general

The Administrator, with the concurrence of the Governor of the State in which the facility is located (in the case of real property at a Federal facility that is listed on the National Priorities List), or the Governor of the State in which the facility is located (in the case of real property at a Federal facility not listed on the National Priorities List) may defer the requirement of subparagraph (A)(ii)(I) with respect to the property if the Administrator or the Governor, as the case may be, determines that the property is suitable for transfer, based on a finding that -

(I) the property is suitable for transfer for the use intended by the transferee, and the intended use is consistent with protection of human health and the environment;

(II) the deed or other agreement proposed to govern the transfer between the United States and the transferee of the property contains the assurances set forth in clause (ii);

(III) the Federal agency requesting deferral has provided notice, by publication in a newspaper of general circulation in the vicinity of the property, of the proposed transfer and of the opportunity for the public to submit, within a period of not less than 30 days after the date of the notice, written comments on the suitability of the property for transfer; and

(IV) the deferral and the transfer of the property will not substantially delay any necessary response action at the property.

(ii) Response action assurances

With regard to a release or threatened release of a hazardous substance for which a Federal agency is potentially responsible under this section, the deed or other agreement proposed to govern the transfer shall contain assurances that

(I) provide for any necessary restrictions on the use of the property to ensure the protection of human health and the environment;

(II) provide that there will be restrictions on use necessary to ensure that required remedial investigations, response action, and oversight activities will not be disrupted;

(III) provide that all necessary response action will be taken and identify the schedules for investigation and completion of all necessary response action as approved by the appropriate regulatory agency; and

(IV) provide that the Federal agency responsible for the property subject to transfer will submit a budget request to the Director of the Office of Management and Budget that adequately addresses schedules for investigation and completion of all necessary response action, subject to congressional authorizations and appropriations.

(iii) Warranty

When all response action necessary to protect human health and the environment with respect to any substance remaining on the property on the date of transfer has been taken, the United States shall execute and deliver to the transferee an appropriate document containing a warranty that all such response action has been taken, and the making of the warranty shall be considered to satisfy the requirement of subparagraph (A)(ii)(I).

(iv) Federal responsibility

A deferral under this subparagraph shall not increase, diminish, or affect in any manner any rights or obligations of a Federal agency (including any rights or obligations under this section and sections 9606 and 9607 of this title existing prior to transfer) with respect to a property transferred under this subparagraph.

(4) Identification of uncontaminated property

(A) In the case of real property to which this paragraph applies (as set forth in subparagraph (E)), the head of the

department, agency, or instrumentality of the United States with jurisdiction over the property shall identify the real property on which no hazardous substances and no petroleum products or their derivatives were known to have been released or disposed of. Such identification shall be based on an investigation of the real property to determine or discover the obviousness of the presence or likely presence of a release or threatened release of any hazardous substance or any petroleum product or its derivatives, including aviation fuel and motor oil, on the real property. The identification shall consist, at a minimum, of a review of each of the following sources of information concerning the current and previous uses of the real property:

(i) A detailed search of Federal Government records pertaining to the property.

(ii) Recorded chain of title documents regarding the real property.

(iii) Aerial photographs that may reflect prior uses of the real property and that are reasonably obtainable through State or local government agencies.

(iv) A visual inspection of the real property and any buildings, structures, equipment, pipe, pipeline, or other improvements on the real property, and a visual inspection of properties immediately adjacent to the real property.

(v) A physical inspection of property adjacent to the real property, to the extent permitted by owners or operators of such property.

(vi) Reasonably obtainable Federal, State, and local government records of each adjacent facility where there has been a release of any hazardous substance or any petroleum product or its derivatives, including aviation fuel and motor oil, and which is likely to cause or contribute to a release or threatened release of any hazardous substance or any petroleum product or its derivatives, including aviation fuel and motor oil, on the real property.

(vii) Interviews with current or former employees involved in operations on the real property. Such

identification shall also be based on sampling, if appropriate under the circumstances. The results of the identification shall be provided immediately to the Administrator and State and local government officials and made available to the public.

(B) The identification required under subparagraph (A) is not complete until concurrence in the results of the identification is obtained, in the case of real property that is part of a facility on the National Priorities List, from the Administrator, or, in the case of real property that is not part of a facility on the National Priorities List, from the appropriate State official. In the case of a concurrence which is required from a State official, the concurrence is deemed to be obtained if, within 90 days after receiving a request for the concurrence, the State official has not acted (by either concurring or declining to concur) on the request for concurrence.

(C)(i) Except as provided in clauses (ii), (iii), and (iv), the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made at least 6 months before the termination of operations on the real property.

(ii) In the case of real property described in subparagraph (E)(i)(II) on which operations have been closed or realigned or scheduled for closure or realignment pursuant to a base closure law described in subparagraph (E)(ii)(I) or (E)(ii)(II) by October 19, 1992, the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made not later than 18 months after October 19, 1992.

(iii) In the case of real property described in subparagraph (E)(i)(II) on which operations are closed or realigned or become scheduled for closure or realignment pursuant to the base closure law described in subparagraph (E)(ii)(II) after October 19, 1992, the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made not later than 18 months after the

date by which a joint resolution disapproving the closure or realignment of the real property under section 2904(b)of such base closure law must be enacted, and such a joint resolution has not been enacted.

(iv) In the case of real property described in subparagraphs (E)(i)(II) on which operations are closed or realigned pursuant to a base closure law described in subparagraph (E)(ii)(III) or (E)(ii)(IV), the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made not later than 18 months after the date on which the real property is selected for closure or realignment pursuant to such a base closure law.

(D) In the case of the sale or other transfer of any parcel of real property identified under subparagraph (A), the deed entered into for the sale or transfer of such property by the United States to any other person or entity shall contain -

(i) a covenant warranting that any response action or corrective action found to be necessary after the date of such sale or transfer shall be conducted by the United States; and

(ii) a clause granting the United States access to the property in any case in which a response action or corrective action is found to be necessary after such date at such property, or such access is necessary to carry out a response action or corrective action on adjoining property.

(E)(i) This paragraph applies to -

(I) real property owned by the United States and on which the United States plans to terminate Federal Government operations, other than real property described in subclause (II); and

(II) real property that is or has been used as a military installation and on which the United States plans to close or realign military operations pursuant to a base closure law.

(ii) For purposes of this paragraph, the term "base closure law" includes the following:

(I) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

(II) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

(III) Section 2687 of title 10.

(IV) Any provision of law authorizing the closure or realignment of a military installation enacted on or after October 19, 1992.

(F) Nothing in this paragraph shall affect, preclude, or otherwise impair the termination of Federal Government operations on real property owned by the United States.

(5) Notification of States regarding certain leases

In the case of real property owned by the United States, on which any hazardous substance or any petroleum product or its derivatives (including aviation fuel and motor oil) was stored for one year or more, known to have been released, or disposed of, and on which the United States plans to terminate Federal Government operations, the head of the department, agency, or instrumentality of the United States with jurisdiction over the property shall notify the State in which the property is located of any lease entered into by the United States that will encumber the property beyond the date of termination of operations on the property. Such notification shall be made before entering into the lease and shall include the length of the lease, the name of person to whom the property is leased, and a description of the uses that will be allowed under the lease of the property and buildings and other structures on the property.

(i) Obligations under Solid Waste Disposal Act

Nothing in this section shall affect or impair the obligation of any department, agency, or instrumentality of the United States to comply with any requirement of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) (including corrective action requirements).

(j) National security

(1) Site specific Presidential orders

The President may issue such orders regarding response actions at any specified site or facility of the Department of

Energy or the Department of Defense as may be necessary to protect the national security interests of the United States at that site or facility. Such orders may include, where necessary to protect such interests, an exemption from any requirement contained in this subchapter or under title III of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 11001 et seq.) with respect to the site or facility concerned. The President shall notify the Congress within 30 days of the issuance of an order under this paragraph providing for any such exemption. Such notification shall include a statement of the reasons for the granting of the exemption. An exemption under this paragraph shall be for a specified period which may not exceed one year. Additional exemptions may be granted, each upon the President's issuance of a new order under this paragraph for the site or facility concerned. Each such additional exemption shall be for a specified period which may not exceed one year. It is the intention of the Congress that whenever an exemption is issued under this paragraph the response action shall proceed as expeditiously as practicable. The Congress shall be notified periodically of the progress of any response action with respect to which an exemption has been issued under this paragraph. No exemption shall be granted under this paragraph due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation.

(2) Classified information

Notwithstanding any other provision of law, all requirements of the Atomic Energy Act (42 U.S.C. 2011 et seq.) and all Executive orders concerning the handling of restricted data and national security information, including "need to know" requirements, shall be applicable to any grant of access to classified information under the provisions of this chapter or under title III of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 11001 et seq.).

United States Code
TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 103 - COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY
SUBCHAPTER I - HAZARDOUS SUBSTANCES RELEASES, LIABILITY, COMPENSATION
Section 9604. Response authorities

(a) Removal and other remedial action by President; applicability of national contingency plan; response by potentially responsible parties; public health threats; limitations on response; exception

(1) Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment. When the President determines that such action will be done properly and promptly by the owner or operator of the facility or vessel or by any other responsible party, the President may allow such person to carry out the action, conduct the remedial investigation, or conduct the feasibility study in accordance with section 9622 of this title. No remedial investigation or feasibility study (RI/FS) shall be authorized except on a determination by the President that the party is qualified to conduct the RI/FS and

only if the President contracts with or arranges for a qualified person to assist the President in overseeing and reviewing the conduct of such RI/FS and if the responsible party agrees to reimburse the Fund for any cost incurred by the President under, or in connection with, the oversight contract or arrangement. In no event shall a potentially responsible party be subject to a lesser standard of liability, receive preferential treatment, or in any other way, whether direct or indirect, benefit from any such arrangements as a response action contractor, or as a person hired or retained by such a response action contractor, with respect to the release or facility in question. The President shall give primary attention to those releases which the President deems may present a public health threat.

(2) Removal Action. - Any removal action undertaken by the President under this subsection (or by any other person referred to in section 9622 of this title) should, to the extent the President deems practicable, contribute to the efficient performance of any long term remedial action with respect to the release or threatened release concerned.

(3) Limitations on Response. - The President shall not provide for a removal or remedial action under this section in response to a release or threat of release -

(A) of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found;

(B) from products which are part of the structure of, and result in exposure within, residential buildings or business or community structures; or

(C) into public or private drinking water supplies due to deterioration of the system through ordinary use.

(4) Exception to Limitations. - Notwithstanding paragraph (3) of this subsection, to the extent authorized by this section, the President may respond to any release or threat of release if in the President's discretion, it constitutes a public health or environmental emergency and no other person with the authority andcapability to respond to the

emergency will do so in a timely manner.

(b) Investigations, monitoring, coordination, etc., by President

(1) Information; studies and investigations

Whenever the President is authorized to act pursuant to subsection (a) of this section, or whenever the President has reason to believe that a release has occurred or is about to occur, or that illness, disease, or complaints thereof may be attributable to exposure to a hazardous substance, pollutant, or contaminant and that a release may have occurred or be occurring, he may undertake such investigations, monitoring, surveys, testing, and other information gathering as he may deem necessary or appropriate to identify the existence and extent of the release or threat thereof, the source and nature of the hazardous substances, pollutants or contaminants involved, and the extent of danger to the public health or welfare or to the environment. In addition, the President may undertake such planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations as he may deem necessary or appropriate to plan and direct response actions, to recover the costs thereof, and to enforce the provisions of this chapter.

(2) Coordination of investigations

The President shall promptly notify the appropriate Federal and State natural resource trustees of potential damages to natural resources resulting from releases under investigation pursuant to this section and shall seek to coordinate the assessments, investigations, and planning under this section with such Federal and State trustees.

(c) Criteria for continuance of obligations from Fund over specified amount for response actions; consultation by President with affected States; contracts or cooperative agreements by States with President prior to remedial actions; cost-sharing agreements; selection by President of remedial actions; State credits: granting of credit, expenses before listing or agreement, response actions between 1978 and 1980, State expenses after December 11, 1980, in excess of

10 percent of costs, item-by-item approval, use of credits; operation and maintenance; limitation on source of funds for O&M; recontracting; siting

(1) Unless (A) the President finds that (i) continued response actions are immediately required to prevent, limit, or mitigate an emergency, (ii) there is an immediate risk to public health or welfare or the environment, and (iii) such assistance will not otherwise be provided on a timely basis, or (B) the President has determined the appropriate remedial actions pursuant to paragraph (2) of this subsection and the State or States in which the source of the release is located have complied with the requirements of paragraph (3) of this subsection, or (C) continued response action is otherwise appropriate and consistent with the remedial action to be taken (FOOTNOTE 1) obligations from the Fund, other than those authorized by subsection (b) of this section, shall not continue after $2,000,000 has been obligated for response actions or 12 months has elapsed from the date of initial response to a release or threatened release of hazardous substances.

(FOOTNOTE 1) So in original. Probably should be followed by a comma.

(2) The President shall consult with the affected State or States before determining any appropriate remedial action to be taken pursuant to the authority granted under subsection (a) of this section.

(3) The President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President providing assurances deemed adequate by the President that (A) the State will assure all future maintenance of the removal and remedial actions provided for the expected life of such actions as determined by the President; (B) the State will assure the availability of a hazardous waste disposal facility acceptable to the President and in compliance with the requirements of subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) for any

necessary offsite storage, destruction, treatment, or secure disposition of the hazardous substances; and (C) the State will pay or assure payment of (i) 10 per centum of the costs of the remedial action, including all future maintenance, or (ii) 50 percent (or such greater amount as the President may determine appropriate, taking into account the degree of responsibility of the State or political subdivision for the release) of any sums expended in response to a release at a facility, that was operated by the State or a political subdivision thereof, either directly or through a contractual relationship or otherwise, at the time of any disposal of hazardous substances therein. For the purpose of clause (ii) of this subparagraph, the term "facility" does not include navigable waters or the beds underlying those waters. In the case of remedial action to be taken on land or water held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe (if such land or water is subject to a trust restriction on alienation), or otherwise within the borders of an Indian reservation, the requirements of this paragraph for assurances regarding future maintenance and cost-sharing shall not apply, and the President shall provide the assurance required by this paragraph regarding the availability of a hazardous waste disposal facility.

(4) Selection of Remedial Action. - The President shall select remedial actions to carry out this section in accordance with section 9621 of this title (relating to cleanup standards).

(5) State Credits. -

(A) Granting of credit. - The President shall grant a State a credit against the share of the costs, for which it is responsible under paragraph (3) with respect to a facility listed on the National Priorities List under the National Contingency Plan, for amounts expended by a State for remedial action at such facility pursuant to a contract or cooperative agreement with the President. The credit under this paragraph shall be limited to those State expenses which the President determines to be reasonable, documented, direct out-of-pocket expenditures of non-Federal funds.

(B) Expenses before listing or agreement. - The credit under this paragraph shall include expenses for remedial action at a facility incurred before the listing of the facility on the National Priorities List or before a contract or cooperative agreement is entered into under subsection (d) of this section for the facility if -

(i) after such expenses are incurred the facility is listed on such list and a contract or cooperative agreement is entered into for the facility, and

(ii) the President determines that such expenses would have been credited to the State under subparagraph (A) had the expenditures been made after listing of the facility on such list and after the date on which such contract or cooperative agreement is entered into.

(C) Response actions between 1978 and 1980. - The credit under this paragraph shall include funds expended or obligated by the State or a political subdivision thereof after January 1, 1978, and before December 11, 1980, for cost-eligible response actions and claims for damages compensable under section 9611 of this title.

(D) State expenses after december 11, 1980, in excess of 10 percent of costs. - The credit under this paragraph shall include 90 percent of State expenses incurred at a facility owned, but not operated, by such State or by a political subdivision thereof. Such credit applies only to expenses incurred pursuant to a contract or cooperative agreement under subsection (d) of this section and only to expenses incurred after December 11, 1980, but before October 17, 1986.

(E) Item-by-item approval. - In the case of expenditures made after October 17, 1986, the President may require prior approval of each item of expenditure as a condition of granting a credit under this paragraph.

(F) Use of credits. - Credits granted under this paragraph for funds expended with respect to a facility may be used by the State to reduce all or part of the share of costs otherwise required to be paid by the State under paragraph (3) in

connection with remedial actions at such facility. If the amount of funds for which credit is allowed under this paragraph exceeds such share of costs for such facility, the State may use the amount of such excess to reduce all or part of the share of such costs at other facilities in that State. A credit shall not entitle the State to any direct payment.

(6) Operation and Maintenance. - For the purposes of paragraph (3) of this subsection, in the case of ground or surface water contamination, completed remedial action includes the completion of treatment or other measures, whether taken onsite or offsite, necessary to restore ground and surface water quality to a level that assures protection of human health and the environment. With respect to such measures, the operation of such measures for a period of up to 10 years after the construction or installation and commencement of operation shall be considered remedial action. Activities required to maintain the effectiveness of such measures following such period or the completion of remedial action, whichever is earlier, shall be considered operation or maintenance.

(7) Limitation on Source of Funds for O&M. - During any period after the availability of funds received by the Hazardous Substance Superfund established under subchapter A of chapter 98 of title 26 from tax revenues or appropriations from general revenues, the Federal share of the payment of the cost of operation or maintenance pursuant to paragraph (3)(C)(i) or paragraph (6) of this subsection (relating to operation and maintenance) shall be from funds received by the Hazardous Substance Superfund from amounts recovered on behalf of such fund under this chapter.

(8) Recontracting. - The President is authorized to undertake or continue whatever interim remedial actions the President determines to be appropriate to reduce risks to public health or the environment where the performance of a complete remedial action requires recontracting because of the discovery of sources, types, or quantities of hazardous substances not known at the time of entry into the original

contract. The total cost of interim actions undertaken at a facility pursuant to this paragraph shall not exceed $2,000,000.

(9) Siting. - Effective 3 years after October 17, 1986, the President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President providing assurances deemed adequate by the President that the State will assure the availability of hazardous waste treatment or disposal facilities which -

(A) have adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated within the State during the 20-year period following the date of such contract or cooperative agreement and to be disposed of, treated, or destroyed,

(B) are within the State or outside the State in accordance with an interstate agreement or regional agreement or authority,

(C) are acceptable to the President, and

(D) are in compliance with the requirements of subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.).

(d) Contracts or cooperative agreements by President with States or political subdivisions or Indian tribes; State applications, terms and conditions; reimbursements; cost-sharing provisions; enforcement requirements and procedures

(1) Cooperative Agreements. -

(A) State applications. - A State or political subdivision thereof or Indian tribe may apply to the President to carry out actions authorized in this section. If the President determines that the State or political subdivision or Indian tribe has the capability to carry out any or all of such actions in accordance with the criteria and priorities established pursuant to section 9605(a)(8) of this title and to carry out related enforcement actions, the President may enter into a contract or cooperative agreement with the State or political subdivision or Indian tribe to carry out such actions. The

President shall make a determination regarding such an application within 90 days after the President receives the application.

(B) Terms and conditions. - A contract or cooperative agreement under this paragraph shall be subject to such terms and conditions as the President may prescribe. The contract or cooperative agreement may cover a specific facility or specific facilities.

(C) Reimbursements. - Any State which expended funds during the period beginning September 30, 1985, and ending on October 17, 1986, for response actions at any site included on the National Priorities List and subject to a cooperative agreement under this chapter shall be reimbursed for the share of costs of such actions for which the Federal Government is responsible under this chapter.

(2) If the President enters into a cost-sharing agreement pursuant to subsection (c) of this section or a contract or cooperative agreement pursuant to this subsection, and the State or political subdivision thereof fails to comply with any requirements of the contract, the President may, after providing sixty days notice, seek in the appropriate Federal district court to enforce the contract or to recover any funds advanced or any costs incurred because of the breach of the contract by the State or political subdivision.

(3) Where a State or a political subdivision thereof is acting in behalf of the President, the President is authorized to provide technical and legal assistance in the administration and enforcement of any contract or subcontract in connection with response actions assisted under this subchapter, and to intervene in any civil action involving the enforcement of such contract or subcontract.

(4) Where two or more noncontiguous facilities are reasonably related on the basis of geography, or on the basis of the threat, or potential threat to the public health or welfare or the environment, the President may, in his discretion, treat these related facilities as one for purposes of this section.

(e) Information gathering and access

(1) Action authorized

Any officer, employee, or representative of the President, duly designated by the President, is authorized to take action under paragraph (2), (3), or (4) (or any combination thereof) at a vessel, facility, establishment, place, property, or location or, in the case of paragraph (3) or (4), at any vessel, facility, establishment, place, property, or location which is adjacent to the vessel, facility, establishment, place, property, or location referred to in such paragraph (3) or (4). Any duly designated officer, employee, or representative of a State or political subdivision under a contract or cooperative agreement under subsection (d)(1) of this section is also authorized to take such action. The authority of paragraphs (3) and (4) may be exercised only if there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance or pollutant or contaminant. The authority of this subsection may be exercised only for the purposes of determining the need for response, or choosing or taking any response action under this subchapter, or otherwise enforcing the provisions of this subchapter.

(2) Access to information

Any officer, employee, or representative described in paragraph (1) may require any person who has or may have information relevant to any of the following to furnish, upon reasonable notice, information or documents relating to such matter:

(A) The identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a vessel or facility or transported to a vessel or facility.

(B) The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a vessel or facility.

(C) Information relating to the ability of a person to pay for or to perform a cleanup.

In addition, upon reasonable notice, such person either (i)

shall grant any such officer, employee, or representative access at all reasonable times to any vessel, facility, establishment, place, property, or location to inspect and copy all documents or records relating to such matters or (ii) shall copy and furnish to the officer, employee, or representative all such documents or records, at the option and expense of such person.

(3) Entry

Any officer, employee, or representative described in paragraph (1) is authorized to enter at reasonable times any of the following:

(A) Any vessel, facility, establishment, or other place or property where any hazardous substance or pollutant or contaminant may be or has been generated, stored, treated, disposed of, or transported from.

(B) Any vessel, facility, establishment, or other place or property from which or to which a hazardous substance or pollutant or contaminant has been or may have been released.

(C) Any vessel, facility, establishment, or other place or property where such release is or may be threatened.

(D) Any vessel, facility, establishment, or other place or property where entry is needed to determine the need for response or the appropriate response or to effectuate a response action under this subchapter.

(4) Inspection and samples

(A) Authority

Any officer, employee or representative described in paragraph (1) is authorized to inspect and obtain samples from any vessel, facility, establishment, or other place or property referred to in paragraph (3) or from any location of any suspected hazardous substance or pollutant or contaminant. Any such officer, employee, or representative is authorized to inspect and obtain samples of any containers or labeling for suspected hazardous substances or pollutants or contaminants. Each such inspection shall be completed with reasonable promptness.

(B) Samples

If the officer, employee, or representative obtains any samples, before leaving the premises he shall give to the owner, operator, tenant, or other person in charge of the place from which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each such sample. A copy of the results of any analysis made of such samples shall be furnished promptly to the owner, operator, tenant, or other person in charge, if such person can be located.

(5) Compliance orders

(A) Issuance

If consent is not granted regarding any request made by an officer, employee, or representative under paragraph (2), (3), or (4), the President may issue an order directing compliance with the request. The order may be issued after such notice and opportunity for consultation as is reasonably appropriate under the circumstances.

(B) Compliance

The President may ask the Attorney General to commence a civil action to compel compliance with a request or order referred to in subparagraph (A). Where there is a reasonable basis to believe there may be a release or threat of a release of a hazardous substance or pollutant or contaminant, the court shall take the following actions:

(i) In the case of interference with entry or inspection, the court shall enjoin such interference or direct compliance with orders to prohibit interference with entry or inspection unless under the circumstances of the case the demand for entry or inspection is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.

(ii) In the case of information or document requests or orders, the court shall enjoin interference with such information or document requests or orders or direct compliance with the requests or orders to provide such information or documents unless under the circumstances of the case the demand for information or documents is arbitrary and capricious, an abuse of discretion, or otherwise not in

accordance with law.

The court may assess a civil penalty not to exceed $25,000 for each day of noncompliance against any person who unreasonably fails to comply with the provisions of paragraph (2), (3), or (4) or an order issued pursuant to subparagraph (A) of this paragraph.

(6) Other authority

Nothing in this subsection shall preclude the President from securing access or obtaining information in any other lawful manner.

(7) Confidentiality of information

(A) Any records, reports, or information obtained from any person under this section (including records, reports, or information obtained by representatives of the President) shall be available to the public, except that upon a showing satisfactory to the President (or the State, as the case may be) by any person that records, reports, or information, or particular part thereof (other than health or safety effects data), to which the President (or the State, as the case may be) or any officer, employee, or representative has access under this section if made public would divulge information entitled to protection under section 1905 of title 18, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter, or when relevant in any proceeding under this chapter.

(B) Any person not subject to the provisions of section 1905 of title 18 who knowingly and willfully divulges or discloses any information entitled to protection under this subsection shall, upon conviction, be subject to a fine of not more than $5,000 or to imprisonment not to exceed one year, or both.

(C) In submitting data under this chapter, a person required to provide such data may (i) designate the data

which such person believes is entitled to protection under this subsection and (ii) submit such designated data separately from other data submitted under this chapter. A designation under this paragraph shall be made in writing and in such manner as the President may prescribe by regulation.

(D) Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by the President (or any representative of the President) under this chapter shall be made available, upon written request of any duly authorized committee of the Congress, to such committee.

(E) No person required to provide information under this chapter may claim that the information is entitled to protection under this paragraph unless such person shows each of the following:

(i) Such person has not disclosed the information to any other person, other than a member of a local emergency planning committee established under title III of the Amendments and Reauthorization Act of 1986 (42 U.S.C. 11001 et seq.), an officer or employee of the United States or a State or local government, an employee of such person, or a person who is bound by a confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures.

(ii) The information is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law.

(iii) Disclosure of the information is likely to cause substantial harm to the competitive position of such person.

(iv) The specific chemical identity, if sought to be protected, is not readily discoverable through reverse engineering.

(F) The following information with respect to any hazardous substance at the facility or vessel shall not be entitled to protection under this paragraph:

(i) The trade name, common name, or generic class or

category of the hazardous substance.

(ii) The physical properties of the substance, including its boiling point, melting point, flash point, specific gravity, vapor density, solubility in water, and vapor pressure at 20 degrees celsius.

(iii) The hazards to health and the environment posed by the substance, including physical hazards (such as explosion) and potential acute and chronic health hazards.

(iv) The potential routes of human exposure to the substance at the facility, establishment, place, or property being investigated, entered, or inspected under this subsection.

(v) The location of disposal of any waste stream.

(vi) Any monitoring data or analysis of monitoring data pertaining to disposal activities.

(vii) Any hydrogeologic or geologic data.

(viii) Any groundwater monitoring data.

(f) Contracts for response actions; compliance with Federal health and safety standards

In awarding contracts to any person engaged in response actions, the President or the State, in any case where it is awarding contracts pursuant to a contract entered into under subsection (d) of this section, shall require compliance with Federal health and safety standards established under section 9651(f) of this title by contractors and subcontractors as a condition of such contracts.

(g) Rates for wages and labor standards applicable to covered work

(1) All laborers and mechanics employed by contractors or subcontractors in the performance of construction, repair, or alteration work funded in whole or in part under this section shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276a et seq.). The President shall not approve any such funding without first obtaining adequate assurance that required labor standards will be

maintained upon the construction work.

(2) The Secretary of Labor shall have, with respect to the labor standards specified in paragraph (1), the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 276c of title 40.

(h) Emergency procurement powers; exercise by President

Notwithstanding any other provision of law, subject to the provisions of section 9611 of this title, the President may authorize the use of such emergency procurement powers as he deems necessary to effect the purpose of this chapter. Upon determination that such procedures are necessary, the President shall promulgate regulations prescribing the circumstances under which such authority shall be used and the procedures governing the use of such authority.

(i) Agency for Toxic Substances and Disease Registry; establishment, functions, etc.

(1) There is hereby established within the Public Health Service an agency, to be known as the Agency for Toxic Substances and Disease Registry, which shall report directly to the Surgeon General of the United States. The Administrator of said Agency shall, with the cooperation of the Administrator of the Environmental Protection Agency, the Commissioner of the Food and Drug Administration, the Directors of the National Institute of Medicine, National Institute of Environmental Health Sciences, National Institute of Occupational Safety and Health, Centers for Disease Control and Prevention, the Administrator of the Occupational Safety and Health Administration, the Administrator of the Social Security Administration, the Secretary of Transportation, and appropriate State and local health officials, effectuate and implement the health related authorities of this chapter. In addition, said Administrator shall -

(A) in cooperation with the States, establish and maintain a national registry of serious diseases and illnesses and a national registry of persons exposed to toxic

substances;

(B) establish and maintain inventory of literature, research, and studies on the health effects of toxic substances;

(C) in cooperation with the States, and other agencies of the Federal Government, establish and maintain a complete listing of areas closed to the public or otherwise restricted in use because of toxic substance contamination;

(D) in cases of public health emergencies caused or believed to be caused by exposure to toxic substances, provide medical care and testing to exposed individuals, including but not limited to tissue sampling, chromosomal testing where appropriate, epidemiological studies, or any other assistance appropriate under the circumstances; and

(E) either independently or as part of other health status survey, conduct periodic survey and screening programs to determine relationships between exposure to toxic substances and illness. In cases of public health emergencies, exposed persons shall be eligible for admission to hospitals and other facilities and services operated or provided by the Public Health Service.

(2)(A) Within 6 months after October 17, 1986, the Administrator of the Agency for Toxic Substances and Disease Registry (ATSDR) and the Administrator of the Environmental Protection Agency ("EPA") shall prepare a list, in order of priority, of at least 100 hazardous substances which are most commonly found at facilities on the National Priorities List and which, in their sole discretion, they determine are posing the most significant potential threat to human health due to their known or suspected toxicity to humans and the potential for human exposure to such substances at facilities on the National Priorities List or at facilities to which a response to a release or a threatened release under this section is under consideration.

(B) Within 24 months after October 17, 1986, the Administrator of ATSDR and the Administrator of EPA shall revise the list prepared under subparagraph (A). Such revision shall include, in order of priority, the addition of 100

or more such hazardous substances. In each of the 3 consecutive 12-month periods that follow, the Administrator of ATSDR and the Administrator of EPA shall revise, in the same manner as provided in the 2 preceding sentences, such list to include not fewer than 25 additional hazardous substances per revision. The Administrator of ATSDR and the Administrator of EPA shall not less often than once every year thereafter revise such list to include additional hazardous substances in accordance with the criteria in subparagraph (A).

(3) Based on all available information, including information maintained under paragraph (1)(B) and data developed and collected on the health effects of hazardous substances under this paragraph, the Administrator of ATSDR shall prepare toxicological profiles of each of the substances listed pursuant to paragraph (2). The toxicological profiles shall be prepared in accordance with guidelines developed by the Administrator of ATSDR and the Administrator of EPA. Such profiles shall include, but not be limited to each of the following:

(A) An examination, summary, and interpretation of available toxicological information and epidemiologic evaluations on a hazardous substance in order to ascertain the levels of significant human exposure for the substance and the associated acute, subacute, and chronic health effects.

(B) A determination of whether adequate information on the health effects of each substance is available or in the process of development to determine levels of exposure which present a significant risk to human health of acute, subacute, and chronic health effects.

(C) Where appropriate, an identification of toxicological testing needed to identify the types or levels of exposure that may present significant risk of adverse health effects in humans.

Any toxicological profile or revision thereof shall reflect the Administrator of ATSDR's assessment of all relevant toxicological testing which has been peer reviewed. The

profiles required to be prepared under this paragraph for those hazardous substances listed under subparagraph (A) of paragraph (2) shall be completed, at a rate of no fewer than 25 per year, within 4 years after October 17, 1986. A profile required on a substance listed pursuant to subparagraph (B) of paragraph (2) shall be completed within 3 years after addition to the list. The profiles prepared under this paragraph shall be of those substances highest on the list of priorities under paragraph (2) for which profiles have not previously been prepared. Profiles required under this paragraph shall be revised and republished as necessary, but no less often than once every 3 years. Such profiles shall be provided to the States and made available to other interested parties.

(4) The Administrator of the ATSDR shall provide consultations upon request on health issues relating to exposure to hazardous or toxic substances, on the basis of available information, to the Administrator of EPA, State officials, and local officials. Such consultations to individuals may be provided by States under cooperative agreements established under this chapter.

(5)(A) For each hazardous substance listed pursuant to paragraph (2), the Administrator of ATSDR (in consultation with the Administrator of EPA and other agencies and programs of the Public Health Service) shall assess whether adequate information on the health effects of such substance is available. For any such substance for which adequate information is not available (or under development), the Administrator of ATSDR, in cooperation with the Director of the National Toxicology Program, shall assure the initiation of a program of research designed to determine the health effects (and techniques for development of methods to determine such health effects) of such substance. Where feasible, such program shall seek to develop methods to determine the health effects of such substance in combination with other substances with which it is commonly found. Before assuring the initiation of such program, the

Administrator of ATSDR shall consider recommendations of the Interagency Testing Committee established under section 4(e) of the Toxic Substances Control Act (15 U.S.C. 2603(e)) on the types of research that should be done. Such program shall include, to the extent necessary to supplement existing information, but shall not be limited to -

(i) laboratory and other studies to determine short, intermediate, and long-term health effects;

(ii) laboratory and other studies to determine organ-specific, site-specific, and system-specific acute and chronic toxicity;

(iii) laboratory and other studies to determine the manner in which such substances are metabolized or to otherwise develop an understanding of the biokinetics of such substances; and

(iv) where there is a possibility of obtaining human data, the collection of such information.

(B) In assessing the need to perform laboratory and other studies, as required by subparagraph (A), the Administrator of ATSDR shall consider -

(i) the availability and quality of existing test data concerning the substance on the suspected health effect in question;

(ii) the extent to which testing already in progress will, in a timely fashion, provide data that will be adequate to support the preparation of toxicological profiles as required by paragraph (3); and

(iii) such other scientific and technical factors as the Administrator of ATSDR may determine are necessary for the effective implementation of this subsection.

(C) In the development and implementation of any research program under this paragraph, the Administrator of ATSDR and the Administrator of EPA shall coordinate such research program implemented under this paragraph with the National Toxicology Program and with programs of toxicological testing established under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.) and the Federal

Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 et seq.). The purpose of such coordination shall be to avoid duplication of effort and to assure that the hazardous substances listed pursuant to this subsection are tested thoroughly at the earliest practicable date. Where appropriate, consistent with such purpose, a research program under this paragraph may be carried out using such programs of toxicological testing.

(D) It is the sense of the Congress that the costs of research programs under this paragraph be borne by the manufacturers and processors of the hazardous substance in question, as required in programs of toxicological testing under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.). Within 1 year after October 17, 1986, the Administrator of EPA shall promulgate regulations which provide, where appropriate, for payment of such costs by manufacturers and processors under the Toxic Substances Control Act, and registrants under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.), and recovery of such costs from responsible parties under this chapter.

(6)(A) The Administrator of ATSDR shall perform a health assessment for each facility on the National Priorities List established under section 9605 of this title. Such health assessment shall be completed not later than December 10, 1988, for each facility proposed for inclusion on such list prior to October 17, 1986, or not later than one year after the date of proposal for inclusion on such list for each facility proposed for inclusion on such list after October 17, 1986.

(B) The Administrator of ATSDR may perform health assessments for releases or facilities where individual persons or licensed physicians provide information that individuals have been exposed to a hazardous substance, for which the probable source of such exposure is a release. In addition to other methods (formal or informal) of providing such information, such individual persons or licensed physicians may submit a petition to the Administrator of ATSDR

providing such information and requesting a health assessment. If such a petition is submitted and the Administrator of ATSDR does not initiate a health assessment, the Administrator of ATSDR shall provide a written explanation of why a health assessment is not appropriate.

(C) In determining the priority in which to conduct health assessments under this subsection, the Administrator of ATSDR, in consultation with the Administrator of EPA, shall give priority to those facilities at which there is documented evidence of the release of hazardous substances, at which the potential risk to human health appears highest, and for which in the judgment of the Administrator of ATSDR existing health assessment data are inadequate to assess the potential risk to human health as provided in subparagraph (F). In determining the priorities for conducting health assessments under this subsection, the Administrator of ATSDR shall consider the National Priorities List schedules and the needs of the Environmental Protection Agency and other Federal agencies pursuant to schedules for remedial investigation and feasibility studies.

(D) Where a health assessment is done at a site on the National Priorities List, the Administrator of ATSDR shall complete such assessment promptly and, to the maximum extent practicable, before the completion of the remedial investigation and feasibility study at the facility concerned.

(E) Any State or political subdivision carrying out a health assessment for a facility shall report the results of the assessment to the Administrator of ATSDR and the Administrator of EPA and shall include recommendations with respect to further activities which need to be carried out under this section. The Administrator of ATSDR shall state such recommendation in any report on the results of any assessment carried out directly by the Administrator of ATSDR for such facility and shall issue periodic reports which include the results of all the assessments carried out under this subsection.

(F) For the purposes of this subsection and section 9611(c)(4) of this title, the term "health assessments" shall include preliminary assessments of the potential risk to human health posed by individual sites and facilities, based on such factors as the nature and extent of contamination, the existence of potential pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size and potential susceptibility of the community within the likely pathways of exposure, the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified hazardous substances and any available recommended exposure or tolerance limits for such hazardous substances, and the comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of exposure. The Administrator of ATSDR shall use appropriate data, risk assessments, risk evaluations and studies available from the Administrator of EPA.

(G) The purpose of health assessments under this subsection shall be to assist in determining whether actions under paragraph (11) of this subsection should be taken to reduce human exposure to hazardous substances from a facility and whether additional information on human exposure and associated health risks is needed and should be acquired by conducting epidemiological studies under paragraph (7), establishing a registry under paragraph (8), establishing a health surveillance program under paragraph (9), or through other means. In using the results of health assessments for determining additional actions to be taken under this section, the Administrator of ATSDR may consider additional information on the risks to the potentially affected population from all sources of such hazardous substances including known point or nonpoint sources other than those from the facility in question.

(H) At the completion of each health assessment, the Administrator of ATSDR shall provide the Administrator of

EPA and each affected State with the results of such assessment, together with any recommendations for further actions under this subsection or otherwise under this chapter. In addition, if the health assessment indicates that the release or threatened release concerned may pose a serious threat to human health or the environment, the Administrator of ATSDR shall so notify the Administrator of EPA who shall promptly evaluate such release or threatened release in accordance with the hazard ranking system referred to in section 9605(a)(8)(A) of this title to determine whether the site shall be placed on the National Priorities List or, if the site is already on the list, the Administrator of ATSDR may recommend to the Administrator of EPA that the site be accorded a higher priority.

(7)(A) Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of a health assessment, the Administrator of ATSDR shall conduct a pilot study of health effects for selected groups of exposed individuals in order to determine the desirability of conducting full scale epidemiological or other health studies of the entire exposed population.

(B) Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of such pilot study or other study or health assessment, the Administrator of ATSDR shall conduct such full scale epidemiological or other health studies as may be necessary to determine the health effects on the population exposed to hazardous substances from a release or threatened release. If a significant excess of disease in a population is identified, the letter of transmittal of such study shall include an assessment of other risk factors, other than a release, that may, in the judgment of the peer review group, be associated with such disease, if such risk factors were not taken into account in the design or conduct of the study.

(8) In any case in which the results of a health assessment indicate a potential significant risk to human health, the Administrator of ATSDR shall consider whether the

establishment of a registry of exposed persons would contribute to accomplishing the purposes of this subsection, taking into account circumstances bearing on the usefulness of such a registry, including the seriousness or unique character of identified diseases or the likelihood of population migration from the affected area.

(9) Where the Administrator of ATSDR has determined that there is a significant increased risk of adverse health effects in humans from exposure to hazardous substances based on the results of a health assessment conducted under paragraph (6), an epidemiologic study conducted under paragraph (7), or an exposure registry that has been established under paragraph (8), and the Administrator of ATSDR has determined that such exposure is the result of a release from a facility, the Administrator of ATSDR shall initiate a health surveillance program for such population. This program shall include but not be limited to -

(A) periodic medical testing where appropriate of population subgroups to screen for diseases for which the population or subgroup is at significant increased risk; and

(B) a mechanism to refer for treatment those individuals within such population who are screened positive for such diseases.

(10) Two years after October 17, 1986, and every 2 years thereafter, the Administrator of ATSDR shall prepare and submit to the Administrator of EPA and to the Congress a report on the results of the activities of ATSDR regarding -

(A) health assessments and pilot health effects studies conducted;

(B) epidemiologic studies conducted;

(C) hazardous substances which have been listed under paragraph (2), toxicological profiles which have been developed, and toxicologic testing which has been conducted or which is being conducted under this subsection;

(D) registries established under paragraph (8); and

(E) an overall assessment, based on the results of activities conducted by the Administrator of ATSDR, of the

linkage between human exposure to individual or combinations of hazardous substances due to releases from facilities covered by this chapter or the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) and any increased incidence or prevalence of adverse health effects in humans.

(11) If a health assessment or other study carried out under this subsection contains a finding that the exposure concerned presents a significant risk to human health, the President shall take such steps as may be necessary to reduce such exposure and eliminate or substantially mitigate the significant risk to human health. Such steps may include the use of any authority under this chapter, including, but not limited to -

(A) provision of alternative water supplies, and

(B) permanent or temporary relocation of individuals.

In any case in which information is insufficient, in the judgment of the Administrator of ATSDR or the President to determine a significant human exposure level with respect to a hazardous substance, the President may take such steps as may be necessary to reduce the exposure of any person to such hazardous substance to such level as the President deems necessary to protect human health.

(12) In any case which is the subject of a petition, a health assessment or study, or a research program under this subsection, nothing in this subsection shall be construed to delay or otherwise affect or impair the authority of the President, the Administrator of ATSDR, or the Administrator of EPA to exercise any authority vested in the President, the Administrator of ATSDR or the Administrator of EPA under any other provision of law (including, but not limited to, the imminent hazard authority of section 7003 of the Solid Waste Disposal Act (42 U.S.C. 6973)) or the response and abatement authorities of this chapter.

(13) All studies and results of research conducted under this subsection (other than health assessments) shall be reported or adopted only after appropriate peer review. Such peer review shall be completed, to the maximum extent

practicable, within a period of 60 days. In the case of research conducted under the National Toxicology Program, such peer review may be conducted by the Board of Scientific Counselors. In the case of other research, such peer review shall be conducted by panels consisting of no less than three nor more than seven members, who shall be disinterested scientific experts selected for such purpose by the Administrator of ATSDR or the Administrator of EPA, as appropriate, on the basis of their reputation for scientific objectivity and the lack of institutional ties with any person involved in the conduct of the study or research under review. Support services for such panels shall be provided by the Agency for Toxic Substances and Disease Registry, or by the Environmental Protection Agency, as appropriate.

(14) In the implementation of this subsection and other health-related authorities of this chapter, the Administrator of ATSDR shall assemble, develop as necessary, and distribute to the States, and upon request to medical colleges, physicians, and other health professionals, appropriate educational materials (including short courses) on the medical surveillance, screening, and methods of diagnosis and treatment of injury or disease related to exposure to hazardous substances (giving priority to those listed in paragraph (2)), through such means as the Administrator of ATSDR deems appropriate.

(15) The activities of the Administrator of ATSDR described in this subsection and section 9611(c)(4) of this title shall be carried out by the Administrator of ATSDR, either directly or through cooperative agreements with States (or political subdivisions thereof) which the Administrator of ATSDR determines are capable of carrying out such activities. Such activities shall include provision of consultations on health information, the conduct of health assessments, including those required under section 3019(b) of the Solid Waste Disposal Act (42 U.S.C. 6939a(b)), health studies, registries, and health surveillance.

(16) The President shall provide adequate personnel for

ATSDR, which shall not be fewer than 100 employees. For purposes of determining the number of employees under this subsection, an employee employed by ATSDR on a part-time career employment basis shall be counted as a fraction which is determined by dividing 40 hours into the average number of hours of such employee's regularly scheduled workweek.

(17) In accordance with section 9620 of this title (relating to Federal facilities), the Administrator of ATSDR shall have the same authorities under this section with respect to facilities owned or operated by a department, agency, or instrumentality of the United States as the Administrator of ATSDR has with respect to any nongovernmental entity.

(18) If the Administrator of ATSDR determines that it is appropriate for purposes of this section to treat a pollutant or contaminant as a hazardous substance, such pollutant or contaminant shall be treated as a hazardous substance for such purpose.

(j) Acquisition of property

(1) Authority

The President is authorized to acquire, by purchase, lease, condemnation, donation, or otherwise, any real property or any interest in real property that the President in his discretion determines is needed to conduct a remedial action under this chapter. There shall be no cause of action to compel the President to acquire any interest in real property under this chapter.

(2) State assurance

The President may use the authority of paragraph (1) for a remedial action only if, before an interest in real estate is acquired under this subsection, the State in which the interest to be acquired is located assures the President, through a contract or cooperative agreement or otherwise, that the State will accept transfer of the interest following completion of the remedial action.

(3) Exemption

No Federal, State, or local government agency shall be liable under this chapter solely as a result of acquiring an

interest in real estate under this subsection.

United States Code
TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 103 - COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY
SUBCHAPTER I - HAZARDOUS SUBSTANCES RELEASES, LIABILITY, COMPENSATION
Sec. 9607. Liability

(a) Covered persons; scope; recoverable costs and damages; interest rate; "comparable maturity" date Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section -

(1) the owner and operator of a vessel or a facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, and

(4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for -

(A) all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not

inconsistent with the national contingency plan;
(B) any other necessary costs of response incurred by any other person consistent with the national contingency plan;
(C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release; and
(D) the costs of any health assessment or health effects study carried out under section 9604(i) of this title. The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D). Such interest shall accrue from the later of (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of title 26. For purposes of applying such amendments to interest under this subsection, the term "comparable maturity" shall be determined with reference to the date on which interest accruing under this subsection commences.
(b) Defenses
There shall be no liability under subsection (a) of this section for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by -
(1) an act of God;
(2) an act of war;
(3) an act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole
contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the

defendant establishes by a preponderance of the evidence that (a) he exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such
hazardous substance, in light of all relevant facts and circumstances, and (b) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or
(4) any combination of the foregoing paragraphs.
(c) Determination of amounts
(1) Except as provided in paragraph (2) of this subsection, the liability under this section of an owner or operator or other responsible person for each release of a hazardous substance or incident involving release of a hazardous substance shall not exceed -
(A) for any vessel, other than an incineration vessel, which carries any hazardous substance as cargo or residue, $300 per gross ton, or $5,000,000, whichever is greater;
(B) for any other vessel, other than an incineration vessel, $300 per gross ton, or $500,000, whichever is greater;
(C) for any motor vehicle, aircraft, hazardous liquid pipeline facility (as defined in section 60101(a) of title 49), or rolling stock, $50,000,000 or such lesser amount as the President shall
establish by regulation, but in no event less than $5,000,000 (or, for releases of hazardous substances as defined in section 9601(14)(A) of this title into the navigable waters, $8,000,000).
Such regulations shall take into account the size, type, location, storage, and handling capacity and other matters relating to the likelihood of release in each such class and to the economic impact of such limits on each such class; or
(D) for any incineration vessel or any facility other than those specified in subparagraph (C) of this paragraph, the total of all costs of response plus $50,000,000 for any damages under this subchapter.

(2) Notwithstanding the limitations in paragraph (1) of this subsection, the liability of an owner or operator or other responsible person under this section shall be the full and total costs of response and damages, if (A)(i) the release or threat of release of a hazardous substance was the result of willful misconduct or willful negligence within the privity or knowledge of such person, or (ii) the primary cause of the release was a violation (within the privity or knowledge of such person) of applicable safety, construction, or operating standards or regulations; or (B) such person fails or refuses to provide all reasonable cooperation and assistance requested by a responsible public official in connection with response activities under the national contingency plan with respect to regulated carriers subject to the provisions of title 49 or vessels subject to the provisions of title 33, 46, or 46 Appendix, subparagraph (A)(ii) of this paragraph shall be deemed to refer to Federal standards or regulations.

(3) If any person who is liable for a release or threat of release of a hazardous substance fails without sufficient cause to properly provide removal or remedial action upon order of the President pursuant to section 9604 or 9606 of this title, such person may be liable to the United States for punitive damages in an amount at least equal to, and not more than three times, the amount of any costs incurred by the Fund as a result of such failure to take proper action. The President is authorized to commence a civil action against any such person to recover the punitive damages, which shall be in addition to any costs recovered from such person pursuant to section 9612(c) of this title. Any moneys received by the United States pursuant to this subsection shall be deposited in the Fund.

(d) Rendering care or advice

(1) In general

Except as provided in paragraph (2), no person shall be liable under this subchapter for costs or damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the National

Contingency Plan ("NCP") or at the direction of an onscene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any releases of a hazardous substance or the threat thereof. This paragraph shall not preclude liability for costs or damages as the result of negligence on the part of such person.

(2) State and local governments

No State or local government shall be liable under this subchapter for costs or damages as a result of actions taken in response to an emergency created by the release or threatened release of a hazardous substance generated by or from a facility owned by another person. This paragraph shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the State or local government. For the purpose of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

(3) Savings provision

This subsection shall not alter the liability of any person covered by the provisions of paragraph (1), (2), (3), or (4) of subsection (a) of this section with respect to the release or threatened release concerned.

(e) Indemnification, hold harmless, etc., agreements or conveyances; subrogation rights

(1) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any vessel or facility or from any person who may be liable for a release or threat of release under this section, to any other person the liability imposed under this section. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

(2) Nothing in this subchapter, including the provisions of paragraph (1) of this subsection, shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have,

by reason of subrogation or otherwise against any person.
(f) Natural resources liability; designation of public trustees of natural resources
(1) Natural resources liability
In the case of an injury to, destruction of, or loss of natural resources under subparagraph (C) of subsection (a) of this section liability shall be to the United States Government and to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State and to
any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust
for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation: Provided, however, That no liability to the United States or State or Indian tribe shall be imposed under subparagraph (C) of subsection (a) of this section, where the party sought to be charged has demonstrated that the damages to natural resources complained of were specifically identified as an irreversible and irretrievable commitment of natural resources
in an environmental impact statement, or other comparable environment analysis, and the decision to grant a permit or license authorizes such commitment of natural resources, and the
facility or project was otherwise operating within the terms of its permit or license, so long as, in the case of damages to an Indian tribe occurring pursuant to a Federal permit or license, the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe. The President, or the authorized representative of any State, shall act on behalf of the public as trustee of such natural resources to recover for such damages. Sums recovered by the United States Government as trustee under this subsection
shall be retained by the trustee, without further appropriation,

for use only to restore, replace, or acquire the equivalent of such natural resources. Sums recovered by a State as trustee under this subsection shall be available for use only to restore, replace, or acquire the equivalent of such natural resources by
the State. The measure of damages in any action under subparagraph (C) of subsection (a) of this section shall not be limited by the sums which can be used to restore or replace such resources. There shall be no double recovery under this chapter for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, or acquisition for the
same release and natural resource. There shall be no recovery under the authority of subparagraph (C) of subsection (a) of this
section where such damages and the release of a hazardous substance from which such damages resulted have occurred wholly
before December 11, 1980.

(2) Designation of Federal and State officials

(A) Federal

The President shall designate in the National Contingency Plan published under section 9605 of this title the Federal officials who shall act on behalf of the public as trustees for natural resources under this chapter and section 1321 of title 33. Such officials shall assess damages for injury to, destruction of, or loss of natural resources for purposes of this chapter and such section 1321 of title 33 for those resources under their trusteeship and may, upon request of and reimbursement from a State and at the Federal officials' discretion, assess damages for those natural resources under the State's trusteeship.

(B) State

The Governor of each State shall designate State officials who may act on behalf of the public as trustees for natural resources under this chapter and section 1321 of title 33 and shall notify the President of such designations. Such State

officials shall assess damages to natural resources for the purposes of this chapter and such section 1321 of title 33 for those natural resources under their trusteeship.

(C) Rebuttable presumption

Any determination or assessment of damages to natural resources for the purposes of this chapter and section 1321 of title 33 made by a Federal or State trustee in accordance with the regulations promulgated under section 9651(c) of this title shall have the force and effect of a rebuttable presumption on behalf of the trustee in any administrative or judicial proceeding under this chapter or section 1321 of title 33.

(g) Federal agencies

For provisions relating to Federal agencies, see section 9620 of this title.

(h) Owner or operator of vessel

The owner or operator of a vessel shall be liable in accordance with this section, under maritime tort law, and as provided under section 9614 of this title notwithstanding any provision of the Act of March 3, 1851 (46 U.S.C. 183ff) (46 App. U.S.C. 182, 183, 184-188) or the absence of any physical damage to the proprietary interest of the claimant.

(i) Application of a registered pesticide product

No person (including the United States or any State or Indian tribe) may recover under the authority of this section for any response costs or damages resulting from the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.). Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance.

(j) Obligations or liability pursuant to federally permitted release

Recovery by any person (including the United States or any

State or Indian tribe) for response costs or damages resulting from a federally permitted release shall be pursuant to existing law in lieu of this section. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance. In addition, costs of response incurred by the Federal Government in connection with a discharge specified in section 9601(10)(B) or (C) of this title shall be recoverable in an action brought under section 1319(b) of title 33.

(k) Transfer to, and assumption by, Post-Closure Liability Fund of liability of owner or operator of hazardous waste disposal facility in receipt of permit under applicable solid waste disposal law; time, criteria applicable, procedures, etc.; monitoring costs; reports

(1) The liability established by this section or any other law for the owner or operator of a hazardous waste disposal facility which has received a permit under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.), shall be transferred to and assumed by the Post-closure Liability Fund established by section 9641 [1] of this title when -

(A) such facility and the owner and operator thereof has complied with the requirements of subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) and regulations issued thereunder, which may affect the performance of such facility after closure; and

(B) such facility has been closed in accordance with such regulations and the conditions of such permit, and such facility and the surrounding area have been monitored as required by such regulations and permit conditions for a period not to exceed five years after closure to demonstrate that there is no substantial

likelihood that any migration offsite or release from confinement of any hazardous substance or other risk to public health or welfare will occur.

(2) Such transfer of liability shall be effective ninety days after the owner or operator of such facility notifies the Administrator of the Environmental Protection Agency (and the State where it has an authorized program under section 3006(b) of the Solid Waste Disposal Act (42 U.S.C. 6926(b))) that the conditions imposed by this subsection have been satisfied. If within such ninety-day period the Administrator of the Environmental Protection Agency or such State determines that any such facility has not complied with all the conditions imposed by this subsection or that insufficient information has been provided to demonstrate such compliance, the Administrator or such State shall so notify the owner and operator of such facility and the administrator of the Fund established by section 9641 [1] of this title, and the owner and operator of such facility shall continue to be liable with respect to such facility under this section and other law until such time as the Administrator and such State determines that such facility has complied with all conditions imposed by this subsection. A determination by the Administrator or such State that a facility has not complied with all conditions imposed by this subsection or that insufficient information has been supplied to demonstrate compliance, shall be a final administrative action for purposes of judicial review. A request for additional information shall state in specific terms the data required.

(3) In addition to the assumption of liability of owners and operators under paragraph (1) of this subsection, the Post-closure Liability Fund established by section 9641 [1] of this title may be used to pay costs of monitoring and care and maintenance of a site incurred by other persons after the period of monitoring required by regulations under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) for hazardous waste disposal facilities meeting the conditions of

paragraph (1) of this subsection.

(4)

(A) Not later than one year after December 11, 1980, the Secretary of the Treasury shall conduct a study and shall submit a report thereon to the Congress on the feasibility of establishing or qualifying an optional system of private insurance for postclosure financial responsibility for hazardous waste disposal facilities to which this subsection applies. Such study shall include a specification of adequate and realistic minimum standards to assure that any such privately placed insurance will carry out the purposes of this subsection in a reliable, enforceable, and practical manner. Such a study shall include an examination of the public and private incentives, programs, and actions necessary to make privately placed insurance a practical and effective option to the financing system for the Post-closure Liability Fund provided in subchapter II [1] of this chapter.

(B) Not later than eighteen months after December 11, 1980, and after a public hearing, the President shall by rule determine whether or not it is feasible to establish or qualify an optional system of private insurance for postclosure financial responsibility for hazardous waste disposal facilities to which this subsection applies. If the President determines the establishment or qualification of such a system would be infeasible, he shall promptly publish an explanation of the reasons for such a determination. If the President determines the establishment or qualification of such a system would be feasible, he shall promptly publish notice of such determination. Not later than six months after an affirmative determination under the preceding sentence and after a public hearing, the President shall by rule promulgate adequate and realistic minimum standards which must be met by any such privately placed insurance, taking into account the purposes of this chapter and this subsection. Such rules shall also specify reasonably expeditious procedures by which privately placed insurance plans can qualify as meeting such minimum standards.

(C) In the event any privately placed insurance plan qualifies under subparagraph (B), any person enrolled in, and complying with the terms of, such plan shall be excluded from the provisions of paragraphs (1), (2), and (3) of this subsection and exempt from the requirements to pay any tax or fee to the Post-closure Liability Fund under subchapter II [1] of this chapter.

(D) The President may issue such rules and take such other actions as are necessary to effectuate the purposes of this paragraph.

(5) Suspension of liability transfer. - Notwithstanding paragraphs (1), (2), (3), and (4) of this subsection and subsection (j) of section 9611 of this title, no liability shall be transferred to or assumed by the Post-Closure Liability Trust Fund established by section 9641 [1] of this title prior to completion of the study required under paragraph (6) of this subsection, transmission of a report of such study to both Houses of Congress, and authorization of such a transfer or assumption by Act of Congress following receipt of such study and report.

(6) Study of options for post-closure program. -

(A) Study. - The Comptroller General shall conduct a study of options for a program for the management of the liabilities associated with hazardous waste treatment, storage, and disposal sites after their closure which complements the policies set forth in the Hazardous and Solid Waste Amendments of 1984 and
assures the protection of human health and the environment.

(B) Program elements. - The program referred to in subparagraph (A) shall be designed to assure each of the following:

(i) Incentives are created and maintained for the safe management and disposal of hazardous wastes so as to assure protection of human health and the environment.

(ii) Members of the public will have reasonable confidence that hazardous wastes will be managed and disposed of safely and that resources will be available to address any problems

that may arise and to cover costs of long-term monitoring, care, and maintenance of such sites.

(iii) Persons who are or seek to become owners and operators of hazardous waste disposal facilities will be able to manage their potential future liabilities and to attract the investment capital necessary to build, operate, and close such facilities in a manner which assures protection of human health and the environment.

(C) Assessments. - The study under this paragraph shall include assessments of treatment, storage, and disposal facilities which have been or are likely to be issued a permit under section 3005 of the Solid Waste Disposal Act (42 U.S.C. 6925) and the likelihood of future insolvency on the part of owners and operators of such facilities. Separate assessments shall be made for different classes of facilities and for different classes of land disposal facilities and shall include but not be limited to -

(i) the current and future financial capabilities of facility owners and operators;

(ii) the current and future costs associated with facilities, including the costs of routine monitoring and maintenance, compliance monitoring, corrective action, natural resource damages, and liability for damages to third parties; and

(iii) the availability of mechanisms by which owners and operators of such facilities can assure that current and future costs, including post-closure costs, will be financed.

(D) Procedures. - In carrying out the responsibilities of this paragraph, the Comptroller General shall consult with the Administrator, the Secretary of Commerce, the Secretary of the Treasury, and the heads of other appropriate Federal agencies.

(E) Consideration of options. - In conducting the study under this paragraph, the Comptroller General shall consider various mechanisms and combinations of mechanisms to complement

the policies set forth in the Hazardous and Solid Waste Amendments of
1984 to serve the purposes set forth in subparagraph (B) and to assure that the current and future costs associated with hazardous waste facilities, including post-closure costs, will be adequately financed and, to the greatest extent possible, borne by the owners and operators of such facilities. Mechanisms to be considered include, but are not limited to -
(i) revisions to closure, post-closure, and financial responsibility requirements under subtitles C and I of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq., 6991 et seq.);
(ii) voluntary risk pooling by owners and operators;
(iii) legislation to require risk pooling by owners and operators;
(iv) modification of the Post-Closure Liability Trust Fund previously established by section 9641 [2] of this
title, and the conditions for transfer of liability under this subsection, including limiting the transfer of some or all liability under this subsection only in the case of insolvency of owners and operators;
(v) private insurance;
(vi) insurance provided by the Federal Government;
(vii) coinsurance, reinsurance, or pooled-risk insurance, whether provided by the private sector or provided or assisted by the Federal Government; and
(viii) creation of a new program to be administered by a new or existing Federal agency or by a federally chartered corporation.
(F) Recommendations. - The Comptroller General shall consider options for funding any program under this section and shall, to the extent necessary, make recommendations to the appropriate committees of Congress for additional authority to implement such
program.
(l) Federal lien
(1) In general

All costs and damages for which a person is liable to the United States under subsection (a) of this section (other than the owner or operator of a vessel under paragraph (1) of subsection (a) of this section) shall constitute a lien in favor of the United States upon all real property and rights to such property which -

(A) belong to such person; and

(B) are subject to or affected by a removal or remedial action.

(2) Duration

The lien imposed by this subsection shall arise at the later of the following:

(A) The time costs are first incurred by the United States with respect to a response action under this chapter.

(B) The time that the person referred to in paragraph (1) is provided (by certified or registered mail) written notice of potential liability.

Such lien shall continue until the liability for the costs (or a judgment against the person arising out of such liability) is satisfied or becomes unenforceable through operation of the statute of limitations provided in section 9613 of this title.

(3) Notice and validity

The lien imposed by this subsection shall be subject to the rights of any purchaser, holder of a security interest, or judgment lien creditor whose interest is perfected under applicable State law before notice of the lien has been filed in the appropriate office within the State (or county or other governmental subdivision), as designated by State law, in which the real property subject to the lien is located. Any such
purchaser, holder of a security interest, or judgment lien creditor shall be afforded the same protections against the lien imposed by this subsection as are afforded under State law
against a judgment lien which arises out of an unsecured obligation and which arises as of the time of the filing of the notice of the lien imposed by this subsection. If the State has not by law designated one office for the receipt of such

notices of liens, the notice shall be filed in the office of the clerk of the United States district court for the district in which the real property is located. For purposes of this subsection, the terms "purchaser" and "security interest" shall have the
definitions provided under section 6323(h) of title 26.

(4) Action in rem

The costs constituting the lien may be recovered in an action in rem in the United States district court for the district in which the removal or remedial action is occurring or has occurred. Nothing in this subsection shall affect the right of the United States to bring an action against any person to recover all costs and damages for which such person is liable under subsection (a) of this section.

(m) Maritime lien

All costs and damages for which the owner or operator of a vessel is liable under subsection (a)(1) of this section with respect to a release or threatened release from such vessel shall constitute a maritime lien in favor of the United States on such vessel. Such costs may be recovered in an action in rem in the district court of the United States for the district in which the vessel may be found. Nothing in this subsection shall affect the right of the United States to bring an action against the owner or operator of such vessel in any court of competent jurisdiction to recover such costs.

(n) Liability of fiduciaries

(1) In general

The liability of a fiduciary under any provision of this chapter for the release or threatened release of a hazardous substance at, from, or in connection with a vessel or facility held in a fiduciary capacity shall not exceed the assets held in the fiduciary capacity.

(2) Exclusion

Paragraph (1) does not apply to the extent that a person is liable under this chapter independently of the person's ownership of a vessel or facility as a fiduciary or actions taken in a

fiduciary capacity.

(3) Limitation

Paragraphs (1) and (4) do not limit the liability pertaining to a release or threatened release of a hazardous substance if negligence of a fiduciary causes or contributes to the release or
threatened release.

(4) Safe harbor

A fiduciary shall not be liable in its personal capacity under this chapter for -

(A) undertaking or directing another person to undertake a response action under subsection (d)(1) of this section or under the direction of an on scene coordinator designated under the National Contingency Plan;

(B) undertaking or directing another person to undertake any other lawful means of addressing a hazardous substance in connection with the vessel or facility;

(C) terminating the fiduciary relationship;

(D) including in the terms of the fiduciary agreement a covenant, warranty, or other term or condition that relates to compliance with an environmental law, or monitoring, modifying
or enforcing the term or condition;

(E) monitoring or undertaking 1 or more inspections of the vessel or facility;

(F) providing financial or other advice or counseling to other parties to the fiduciary relationship, including the settlor or beneficiary;

(G) restructuring, renegotiating, or otherwise altering the terms and conditions of the fiduciary relationship;

(H) administering, as a fiduciary, a vessel or facility that was contaminated before the fiduciary relationship began; or

(I) declining to take any of the actions described in subparagraphs (B) through (H).

(5) Definitions

As used in this chapter:

(A) Fiduciary

The term "fiduciary" -
(i) means a person acting for the benefit of another party as a bona fide -
(I) trustee;
(II) executor;
(III) administrator;
(IV) custodian;
(V) guardian of estates or guardian ad litem;
(VI) receiver;
(VII) conservator;
(VIII) committee of estates of incapacitated persons;
(IX) personal representative;
(X) trustee (including a successor to a trustee) under an indenture agreement, trust agreement, lease, or similar financing agreement, for debt securities, certificates of interest or certificates of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender; or
(XI) representative in any other capacity that the Administrator, after providing public notice, determines to be similar to the capacities described in subclauses (I) through (X); and
(ii) does not include -
(I) a person that is acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, 1 or more estate plans or because of the incapacity of a natural person; or
(II) a person that acquires ownership or control of a vessel or facility with the objective purpose of avoiding liability of the person or of any other person.
(B) Fiduciary capacity
The term "fiduciary capacity" means the capacity of a person in holding title to a vessel or facility, or otherwise having control of or an interest in the vessel or facility, pursuant to

the exercise of the responsibilities of the person as a fiduciary.

(6) Savings clause

Nothing in this subsection -

(A) affects the rights or immunities or other defenses that are available under this chapter or other law that is applicable to a person subject to this subsection; or

(B) creates any liability for a person or a private right of action against a fiduciary or any other person.

(7) No effect on certain persons

Nothing in this subsection applies to a person if the person -

(A)

(i) acts in a capacity other than that of a fiduciary or in a beneficiary capacity; and

(ii) in that capacity, directly or indirectly benefits from a trust or fiduciary relationship; or

(B)

(i) is a beneficiary and a fiduciary with respect to the same fiduciary estate; and

(ii) as a fiduciary, receives benefits that exceed customary or reasonable compensation, and incidental benefits, permitted under other applicable law.

(8) Limitation

This subsection does not preclude a claim under this chapter against -

(A) the assets of the estate or trust administered by the fiduciary; or

(B) a nonemployee agent or independent contractor retained by a fiduciary.

Footnotes

[1] See References in Text note below.

[2] See References in Text note below.

United States Code
TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 103 - COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY
SUBCHAPTER III - MISCELLANEOUS PROVISIONS
Section 9659. Citizens suits

(a) Authority to bring civil actions

Except as provided in subsections (d) and (e) of this section and in section 9613(h) of this title (relating to timing of judicial review), any person may commence a civil action on his own behalf -

(1) against any person (including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any standard, regulation, condition, requirement, or order which has become effective pursuant to this chapter (including any provision of an agreement under section 9620 of this title, relating to Federal facilities); or

(2) against the President or any other officer of the United States (including the Administrator of the Environmental Protection Agency and the Administrator of the ATSDR) where there is alleged a failure of the President or of such other officer to perform any act or duty under this chapter, including an act or duty under section 9620 of this title (relating to Federal facilities), which is not discretionary with the President or such other officer.

Paragraph (2) shall not apply to any act or duty under the provisions of section 9660 of this title (relating to research, development, and demonstration).

(b) Venue

(1) Actions under subsection (a)(1)

Any action under subsection (a)(1) of this section shall

be brought in the district court for the district in which the alleged violation occurred.

(2) Actions under subsection (a)(2)

Any action brought under subsection (a)(2) of this section may be brought in the United States District Court for the District of Columbia.

(c) Relief

The district court shall have jurisdiction in actions brought under subsection (a)(1) of this section to enforce the standard, regulation, condition, requirement, or order concerned (including any provision of an agreement under section 9620 of this title), to order such action as may be necessary to correct the violation, and to impose any civil penalty provided for the violation. The district court shall have jurisdiction in actions brought under subsection (a)(2) of this section to order the President or other officer to perform the act or duty concerned.

(d) Rules applicable to subsection (a)(1) actions

(1) Notice

No action may be commenced under subsection (a)(1) of this section before 60 days after the plaintiff has given notice of the violation to each of the following:

(A) The President.

(B) The State in which the alleged violation occurs.

(C) Any alleged violator of the standard, regulation, condition, requirement, or order concerned (including any provision of an agreement under section 9620 of this title).

Notice under this paragraph shall be given in such manner as the President shall prescribe by regulation.

(2) Diligent prosecution

No action may be commenced under paragraph (1) of subsection (a) of this section if the President has commenced and is diligently prosecuting an action under this chapter, or under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) to require compliance with the standard, regulation, condition, requirement, or order concerned (including any provision of an agreement under section 9620 of this title).

(e) Rules applicable to subsection (a)(2) actions

No action may be commenced under paragraph (2) of subsection (a) of this section before the 60th day following the date on which the plaintiff gives notice to the Administrator or other department, agency, or instrumentality that the plaintiff will commence such action. Notice under this subsection shall be given in such manner as the President shall prescribe by regulation.

(f) Costs

The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(g) Intervention

In any action under this section, the United States or the State, or both, if not a party may intervene as a matter of right. For other provisions regarding intervention, see section 9613 of this title.

(h) Other rights

This chapter does not affect or otherwise impair the rights of any person under Federal, State, or common law, except with respect to the timing of review as provided in section 9613(h) of this title or as otherwise provided in section 9658 of this title (relating to actions under State law).

(i) Definitions

The terms used in this section shall have the same meanings as when used in subchapter I of this chapter.

UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY
WASHINGTON, D.C. 20460

July 2, 1999

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Dr. Henry Falk
Acting Assistant Administrator
Agency for Toxic Substances and Disease Registry
1600 Clifton Road, NE (MS-E28)
Atlanta, GA 30333

Dear Dr. Falk:

This letter is in response to a letter from Dr. Barry Johnson regarding the Agency for Toxic Substances and.Disease Registry's (ATSDR's) proposed Hanford Medical Monitoring Program We apologize for not responding sooner to the November 24 correspondence that followed up on a meeting between ATSDR and the U.S. Environmental Protection Agency (EPA) in September 1998.

Thank you for the information brought to our attention at the meeting and in the subsequent correspondence, specifically relating to your Agency's proposed Medical Monitoring

Program and its efforts to obtain necessary funding. We have an appreciation for the health issues surrounding the Hanford site and ATSDR's efforts to deal with them through a variety of public health activities. As I nid to Dr. Johnson at the September meeting, I encourage ATSDR to continue to seek funding for the Medical Monitoring Program from the Department of Energy (DOE). While I recognize the value of such a program, I cannot foresee using EPA's Superfund dollars to pay for it since, under the Executive Order implementing CERCLA, the Department of Energy is the lead cleanup agency. Consequently, EPA's position is that DOE, not EPA, is responsible for funding health studies at DOE sites.

I understand that although the Department of Energy's FY99 budget included funds for the Hanford Medical Monitoring Program, ATSDR has not yet received the funds. I know that your Agency is working with DOE and congressional staff to resolve issues that will allow for the release of funds, including the modification of the cancer screening protocol and formulation of an overall DOE plan of action to outline public health activities as all DOE sites and establish funding priorities. I hope the issues can be brought to resolution and the funding released. r am also aware that ATSDR is in the midst of completing public health assessments for Hanford and has been working closely with the Hanford Health Effects Subcommittee.

Certainly, the Hanford site and public health issues surrounding it continue to be challenging. Thank you for your support of the Superfund program. I wish you the best as you begin your new assignment as Acting Assistant Administrator.:

cc: Mark Bashor, ATSDR
Greg Thomas, ATSDR
Steve Jones, ATSDR
Chuck Clarke, Region X
Mike Gearheard, Region X
Doug Sherwood, Region X
Jim Woolford, OSWER/FFRRO
Sincerely,

Timothy Fields, Jr .
Acting Assistant Administrator

HANFORD HEALTH EFFECTS SUBCOMMITTEE PROJECTS MEETING

FINAL AS OF OCTOBER *25,* 2001 WEDNESDAY, AUGUST 29, 2001

PENDLETON, OREGON

EXCERPT

CHAIR

Jude Van Buren, Dr., Ph.D.

DESIGNATED FEDERAL OFFICIAL
Lawson F. Bell, P.E.E.

MEMBERS PRESENT:

Delbert Barth, Ph.D. Herman Cember, Ph.D. Darrell Fisher, Ph.D.
Ricardo Garcia
Linda Keir
Wilbur Slockish, Jr. Henry Hartley III
Denis Bourcier Ph.D. Trisha Pritikin, J.D.
Martha McNeely

Carol A. Nevarez
Certified Shorthand Reporter *18534* Rose Court
West Linn, Oregon 97068 Phone *(503) 636-5937*

GOVERNMENTAL TRIBAL LIAISONS
Greg DeBruler, Kalispel Nation
Hill Denton, Coeur d'Alene
Adriane Borgias, Kootenai Tribe
John Stanfill, Nez Perce
Brian Boltz, Umatilla Tribe

GOVERNMENTAL STATE LIAISONS
John Erickson, Washington

AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY

Henry Falk, M.D.
Mike Brooks
Dean Seneca
Alan Crawford
Robert Spengler
Greg Thomas
Caroline Cusack
Judy Smith
Sylvia Allen-Lewis
Bob Williams Marilyn Palmer
Evelyn Finch

Helen Kirkendall

ALSO PRESENT:
Carter Kirk, DOE-Richland

Steven Smith, NORC Mike Donnelly
Charles Miller
Andre Bouville Jim Thomas
Larry Caldwell

HENRY FALK: Thank you very much. Can everybody hear me? What I would like to do is make some opening remarks, and I'll try not to speak too long. I would be happy to answer questions or address issues with you and hear your thoughts. I'll try to leave a certain amount of time for discussion.

By way of background, I've been Assistant Administrator at ATSDR now for two years. I started in the summer two years ago. My own background is initially as a pediatrician, and then I came to Centers for Disease Control. I was an environmental epidemiologist for many years and worked on issues from lead poisoning, to asthma, to emergency responses, different kinds of enviromnental issues.

I worked for Glyn Caidwell at the beginning on Nevada Test Site issues. Two years ago, I came over to work at ATSDR. So, that's my own background.

I mentioned this last night for those of you who were here, I think FACA committees are very challenging. There is a real premium to be paid in terms of devising committees which include very diverse viewpoints and driving a process consulting and evaluations for EPA. During my first year on the job, I visited all 10 EPA regional administrators and EPA headquarters in Washington to meet with them. I think we actually have a very good working relationship with EPA.

Alaska working with Alaskan Native groups. And I think we are committed to working with tribes. And hopefully, we can improve what we do there. Again, what we do in terms of actual funding is, I think, relatively small, but hopefully will grow in the future.

In terms of the list of priorities that were sent to me in the letter from Jude, and I think you all had discussed it, I guess the biggest question mark, obviously, is the medical monitoring issue. As you know, it's something that the agency has supported now for a number of years, supported the concept in terms of proposing it, but we have never received funding for the medical monitoring. One of the first things I did when I came to ATSDR was to meet with DOE and several congressional staff to see what was possible in medical monitoring funding, but I did not get very far at that time. There is, you know, a lot of different ways we can discuss this. I know questions were raised whether the funds can come from other sources, and I think, really, some funding will have to come through the federal facility funding stream. It's just based on my experience working with Superfund and CERCLA. I think that's something maybe we all need to think about in terms of how to go about trying to get this accomplished. I think we need to do this on several levels. One is to think about the project itself, whether we want to think about medical monitoring slightly differently or separately that maybe might attract funding. I'm certainly open to discussing that. I think we really need to think about what is the best way to get funding from DOE to support health issues.

Frankly, I've tried very hard with the DOE/EHS group. Their budgets keep shrinking. They tell ATSDR and CDC that next year's budget will be smaller than it is this year. And in reality, they are a very small part of the DOE budget. I know from the years when I was involved with the HTDS study that funds came out of DOE/EM came every year. And if one

looks at the funding realities, the EM budget for Hanford next year is 1.4 billion dollars for cleanup, maybe 1.8 billion dollars if the congressional proposals go through. Things like Hanford Medical Monitoring, the health studies, are really just a very tiny part of that budget -less than one percent of it. So maybe we -maybe there is a need to really think about what is the right kind of way for DOE funding of the health issues.

And so, I think maybe there are things in terms of very practical issues that one needs to consider. I think this coming year, we might look at new kinds of ways to approach this.

Somebody mentioned that there are changes in leadership everywhere. I think that's a big feature. The Department of Energy, the Administration have new leadership. These are new people in Congress, and a new Secretary of HHS. And you know, all the people have not been named yet. It's time to really think about what is the best way to approach different groups.

So, I'm eager to think about how to accomplish this. And maybe you will have some discussions in the course of this meeting. I'll be happy to work with Jude and the rest of you to think of some way to practically accomplish the things that we would like to accomplish, and it would require thinking about how we approach the issues. We have to do that because after these I think they would say the same thing. We focus on the health issues, although we do sometimes focus on cleanups. If they discuss different ways of doing cleanups, we can get involved in evaluating some of the cleanup plans, but we don't do that uniformly in all cases because very often, those are seen as technical issues. Cleanup is not seen as necessarily a health issue.

So, I think in relation to EPA, I think they feel that our involvement helps them, and I think it probably helps communities when we and EPA appear together. I think it's a lot more complicated at federal sites because basically, EPA has said to us that other federal agencies should be supporting their activities at federal sites. We are looking to DOE and DOD to support our activities. And honestly, it's just not as close a working relationship.

So, I think probably, relationships with EPA are less a problem than at the federal facilities. We do have people in the EPA Seattle Regional Office. We have five people stationed there. They work very closely with EPA. I visited there three or four times over the last two years, but never really entered into a discussion about the federal sites with EPA. If there are things that we could be doing in terms of EPA and DOE that would actually be more effective, I'm happy to discuss that with you and maybe follow-up on that or maybe ask our regional office folks to visit with you and get suggestions from you.

So, I'm willing to think about that. But our manner of operation is different in terms of federal versus non-federal sites. Greg could follow-up with you afterwards because he's in our Region 10 Office.

JUDE VAN BUREN: I'm going to take one more question.

JIM THOMAS: Jim Thomas. Given that ATSDR now can make finding proposals directly to Congress, why isn't the money for the Hanford medical monitoring program part of that?

HENRY FALK: The appropriations bills are Reid of Nevada, now chairs that subcommittee in the Senate. So that our ability now to have separate standing really relates only to the VA, HUD and Independent Agencies subcommittee. They

have given us a separate budget account for the Superfund program as it relates to EPA and it comes out of that subcommittee. It doesn't change our relationship any with any of the put together by different appropriations subcommittees.

We, in our funding for Superfund, deal with the VA, HUD and Independent Agencies Appropriations Subcommittee, which is the appropriations subcommittee that deals with the EPA budget. So, for issues that relate to CERCLA, we work through that VA/HUD and Independent Agency subcommittee.

We have no relationship to HHS appropriations subcommittee. As I said, at the moment. we don't have Public Health Service Act authorities, and so we don't relate to the health subcommittee. And the energy funding for DOE comes though yet another subcommittee, which is the Appropriations Subcommittee for Energy and Water, and I believe Senator Harry other subcommittees. So, in terms of Energy and Water and DOE, we're still in the same mode of every year we approach DOE and tell them what we need. CDC does the same thing. We always get probably less than *50* percent of what we ask for. but more than that, we're not really engaged in the appropriation process.

JIM THOMAS: It's just that direct interface with Congress just affects non-federal -HENRY FALK: Right. It's the CERCLA budget, and it's the part that's doesn't relate to the federal agencies. So, DOE, DOD -- those funds actually come through separate appropriations subcommittees and through DOE and DOD. And correct, we don't have any kind of independent standing with those subcommittees.

JIM THOMAS: Have you approached environ - EM on finding?

HENRY FALK: You know, I think in the early years that existed for ATSDR, and it changed over the course of time. I think as there are new people coming on board in DOE and as new people in the Congressional subcommittees and so on, this is maybe a time to think about what are the possibilities in terms of funding for the health-related issues, including, e-s-i medical monitoring or registries or anything of that nature. I think it really is an important time. And, you know, maybe now is a good time to think about those things. That's the bottom line.

JIM THOMAS: Thank you.

JUDE VAN BUREN: Thank you very much. I know that Dr. Falk will be here until about 1:30?

HENRY FALK: Lunchtime.

JUDE VAN BUREN: So, if, perhaps at lunch, if you would like to talk with him, he's available, he will be here for the rest of the morning.

Thank you very much. We really appreciate you coming all the way out. Thank you.

NOTICES

DEPARTMENT OF ENERGY

Energy Employees Occupational Illness Compensation Act of 2000; Revision to List of Covered Facilities

Monday, June 11, 2001

*31218 AGENCY: Department of Energy.

ACTION: Notice of revision of listing of covered facilities.

SUMMARY: On January 17, 2001, the Department of Energy ("Department" or "DOE") published a list of facilities covered under the Energy Employees Occupational Illness Compensation Act of 2000 ("Act"), Title 36 of Public Law 106-398. (66 FR 4003--4009). The Act establishes a program to provide compensation to individuals who developed illnesses as a result of their employment in nuclear weapons production-related activities and at certain federally-owned facilities in which radioactive materials were used. This notice revises that previous list and provides additional information about the covered facilities. The original notice provides detailed background information about this matter.

FOR FURTHER INFORMATION CONTACT: Office of Worker Advocacy, 1-877-447-9756.

ADDRESSES: The Department welcomes comments on this list. Individuals who wish to suggest additional facilities for inclusion on the list, indicate why one or more facilities

should be removed from the list, or provide other information may contact:

Office of Worker Advocacy (EH-8), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, email: worker_advocacy @eh.doe.gov, toll-free: 1-877-447-9756

SUPPLEMENTARY INFORMATION:

Purpose

The Energy Employees Occupational Illness Compensation Act of 2000 ("Act"), Title 36 of Public Law 106-398, establishes a program to provide compensation to individuals who developed illnesses as a result of their employment in nuclear weapons production-related activities and at certain federally-owned facilities in which radioactive materials were used. On December 7, 2000, the President issued Executive Order 13179 ("Order") directing the Department of Energy ("Department" or "DOE") to list covered facilities in the Federal Register, which the Department did on January 17, 2001. This notice revises the previous list and provides additional information about the covered facilities.

Section 2. c. vii of the Order instructs the Department to list three types of facilities defined in the Act:

(1) Atomic weapons employer facilities, as defined in section 3621 (4);

(2) Department of Energy facilities, as defined by section 3621 (12); and

(3) Beryllium vendors, as defined by section 3621 (6).

Compensation options and mechanisms are defined differently for each of these facility categories. The atomic weapons employer category includes facilities in which the primary work was not related to atomic weapons, and consequently these facilities are not commonly known as atomic weapons facilities. Their inclusion in this list is consistent with the Act, and is not intended as a classification for any other purpose.

The list at the end of this notice represents the Department's best efforts to date to compile a list of facilities in these three categories. This listing includes 320 facilities in 40 jurisdictions. It adds five facilities, removes one facility, and consolidates four sets of duplicates and changes one name. The facilities whose names no ***31219** longer appear on the list were removed because either the information that was used to justify the initial listing was found to be in error or corporate histories were found to be interwoven and the listings were actually duplicative. The Department is continuing its research efforts, and continued revisions to this list should be expected. The public is invited to comment on the list and to provide additional information.

In addition to continuing its research efforts, the Department is developing information dissemination mechanisms to make facility-specific data available to the public. Information about each listed facility, including the dates and type of work done there, is available by contacting the Office of Worker Advocacy. These descriptions are available in print form and also electronically (via the World Wide Web at http://www.eh.doe.gov/advocacy).

Introduction to the Covered Facility List

The list that follows covers the three categories of employers defined by the Act: atomic weapons employers ("AWE"), Department of Energy facilities ("DOE"), and beryllium vendors ("BE").

Each of the categories has been defined in the original notice and include:

1. Atomic Weapons Employers

The lines between research, atomic weapons production, and non-weapons production are often difficult to draw. For the purposes of this notice, and as directed by the Act, only those facilities whose work involved radioactive material that was connected to the weapons production chain are included. This includes facilities that received radioactive material that had been used in the production of an atomic weapon, or the "back end" of the production cycle, such as waste handling or reprocessing operations. For the purposes of this listing, the Department considers commercial nuclear fuel fabricators to be covered facilities for those periods when they either supplied radioactive materials to the Department or received radioactive materials that had been used in the Department's production reactors.

Corporate information regarding many of the listed facilities is often not readily available. The Department welcomes comments or additional information regarding facilities that may have supported atomic weapons production that are not on this list, as well as information that clarifies the work done at facilities named below.

2. Department of Energy Facilities

The listing of Department of Energy facilities is only intended for the context of implementing this Act and does not create or imply any new Departmental obligations or ownership at any of the facilities named on this list.

3. Beryllium Vendors

Section 3621(6) of the Act defines beryllium vendor as the following:

"(A) Atomics International.

(B) Brush Wellman, Incorporated, and its predecessor, Brush Beryllium Company.

(C) General Atomics.

(D) General Electric Company.

(E) NGK Metals Corporation and its predecessors, Kawecki-Berylco, Cabot Corporation, BerylCo, and Beryllium Corporation of America.

(F) Nuclear Materials and Equipment Corporation.

(G) StarMet Corporation, and its predecessor, Nuclear Metals, Incorporated.

(H) Wyman Gordan, Incorporated.

(I) Any other vendor, processor, or producer of beryllium or related products designated as a beryllium vendor for purposes of this title under Section 3622."

The list indicates private firms that processed, produced, or provided beryllium metal for the Department, as defined by the Act. This information is drawn from a variety of historical documents, to the extent that the Department has been able to identify and locate these records. Nevertheless, it is likely that much information remains to be identified. The Department welcomes comments or additional information about its beryllium vendors.

Jurisdiction and facility name	Location	Facility type
AL--Southern Research Institute	Birmingham	AWE
AL--Speedring, Inc	Culman	BE
AL--Tennessee Valley Authority	Muscle Shoals	AWE
AK--Amchitka Island Nuclear Explosion Site	Amchitka Island	DOE
AK--Project Chariot Site	Cape Thompson	DOE
CA--Arthur D. Little Co	San Francisco	AWE
CA--California Research Corp	Richmond	AWE
CA--Ceradyne, Inc	Santa Ana	BE
CA--Dow Chemical Co	Walnut Creek	AWE
CA--Electro Circuits, Inc	Pasadena	AWE
CA--Energy Technology Engineering Center (Atomics International/Rocketdyne)	Santa Susana (Canoga Park)	BE DOE
CA--General Atomics	La Jolla	AWE BE DOE
CA--General Electric Vallecitos	Pleasanton	AWE DOE
CA--Hunter Douglas Aluminum Corp	Riverside	AWE
CA--Laboratory for Energy-Related Health Research	Davis	DOE
CA--Laboratory of Biomedical and Environmental Sciences	Los Angeles	DOE
CA--Laboratory of Radiobiology and	San Francisco	DOE

Environmental Health		
CA--Lawrence Berkeley National Laboratory	Berkeley	DOE
CA--Lawrence Livermore National Laboratory	Livermore	DOE
CA--Sandia Laboratory, Salton Sea Base	Imperial County	DOE
CA--Sandia National Laboratories--Livermore	Livermore	DOE
CA--Stanford Linear Accelerator Center	Palo Alto	DOE
CA--Stauffer Metals, Inc	Richmond	AWE
CA--University of California	Berkeley	AWE DOE
CO--Coors Porcelain	Golden	BE
CO--Project Rio Blanco Nuclear Explosion Site	Rifle	DOE
CO--Project Rulison Nuclear Explosion Site	Grand Valley	DOE
CO--Rocky Flats Plant	Golden	DOE
CO--Shattuck Chemical	Denver	AWE
CO--University of Denver Research Institute	Denver	AWE BE
CT--American Chain and Cable Co	Bridgeport	AWE
CT--Anaconda Co	Waterbury	AWE
CT--Bridgeport Brass Co, Havens Lab	Bridgeport	AWE
CT--Combustion Engineering	Windsor	AWE DOE
CT--Connecticut Aircraft Nuclear Engine Laboratory (CANEL)	Middletown	BE DOE
CT--Dorr Corp	Stamford	AWE

CT--Fenn Machinery Co	Hartford	AWE
CT--New England Lime Co	Canaan	AWE
CT--Seymour Specialty Wire	Seymour	AWE DOE
CT--Sperry Products, Inc	Danbury	AWE
CT--Torrington Co	Torrington	AWE
DE--Allied Chemical and Dye Corp	North Claymont	AWE
DC--National Bureau of Standards, Van Ness Street	Washington	AWE
DC--Naval Research Laboratory	Washington	AWE DOE
FL--American Beryllium Co	Sarasota	BE
FL--Armour Fertilizer Works	Bartow	AWE
FL--Gardinier, Inc	Tampa	AWE
FL--International Minerals and Chemical Corp	Mulberry	AWE
FL--Pinellas Plant	Clearwater	DOE
FL--University of Florida	Gainesville	AWE
FL--Virginia-Carolina Chemical Corp	Nichols	AWE
FL--W.R. Grace Co, Agricultural Chemical Div	Ridgewood	AWE
ID--Argonne National Laboratory--West	Scoville	DOE
ID--Idaho National Engineering Laboratory	Scoville	DOE
IL--Allied Chemical Corp Plant	Metropolis	AWE
IL--American Machine and Metals, Inc	E. Moline	AWE

IL--Argonne National Laboratory--East	Argonne	DOE
IL--Armour Research Foundation	Chicago	AWE
IL--Blockson Chemical Co	Joliet	AWE
IL--C-B Tool Products Co	Chicago	AWE
IL--Crane Co	Chicago	AWE
IL--ERA Tool and Engineering Co	Chicago	AWE
IL--Fansteel Metallurgical Corp	North Chicago	BE
IL--Fermi National Accelerator Laboratory	Batavia	DOE
IL--Granite City Steel	Granite City	AWE DOE
IL--Great Lakes Carbon Corp	Chicago	AWE
IL--GSA 39th Street Warehouse	Chicago	AWE
IL--International Register	Chicago	AWE
IL--Kaiser Aluminum Corp	Dalton	AWE
IL--Lindsay Light and Chemical Co	W. Chicago	AWE
IL--Madison Site (Speculite)	Madison	AWE DOE
IL--Midwest Manufacturing Co	Galesburg	AWE
IL--Museum of Science and Industry	Chicago	AWE
IL--National Guard Armory	Chicago	AWE DOE
IL--Podbeliniac Corp	Chicago	AWE
IL--Precision Extrusion Co	Bensenville	AWE

IL--Quality Hardware and Machine Co	Chicago	AWE
IL--R. Krasburg and Sons Manufacturing Co	Chicago	AWE
IL--Sciaky Brothers, Inc	Chicago	AWE
IL--Swenson Evaporator Co	Harvey	AWE
IL--University of Chicago	Chicago	AWE DOE
IL--W.E. Pratt Manufacturing Co	Joliet	AWE
IL--Wyckoff Drawn Steel Co	Chicago	AWE
IN--American Bearing Corp	Indianapolis	AWE
IN--Dana Heavy Water Plant	Dana	DOE
IN--General Electric Plant	Shelbyville	AWE
IN--Joslyn Manufacturing and Supply Co	Ft. Wayne	AWE
IN--Purdue University	Lafayette	AWE
IN--Wash-Rite	Indianapolis	AWE
IA--Ames Laboratory	Ames	DOE
IA--Bendix Aviation (Pioneer Division)	Davenport	AWE
IA--Iowa Ordnance Plant	Burlington	DOE
IA--Titus Metals	Waterloo	AWE
KS--Spencer Chemical Co, Jayhawks Works	Pittsburg	AWE
KY--Paducah Gaseous Diffusion Plant	Paducah	DOE
MD--Armco-Rustless Iron & Steel	Baltimore	AWE
MD--W.R. Grace and Company	Curtis Bay	AWE DOE
MA--American Potash &	West Hanover	AWE

Chemical		
MA--C.G. Sargent & Sons	Graniteville	AWE
MA--Chapman Valve	Indian Orchard	AWE DOE
MA--Edgerton Germeshausen & Grier, Inc	Boston	AWE
MA--Fenwal, Inc	Ashland	AWE
MA--Franklin Institute	Boston	BE
MA--Heald Machine Co	Worcester	AWE
MA--La Pointe Machine and Tool Co	Hudson	AWE
MA--Massachusetts Institute of Technology	Cambridge	AWE BE
MA--Metals and Controls Corp	Attleboro	AWE
MA--National Research Corp	Cambridge	AWE
MA--Norton Co	Worcester	AWE BE
MA--Nuclear Metals, Inc	Concord	AWE BE
MA--Reed Rolled Thread Co	Worcester	AWE
MA--Shpack Landfill	Norton	AWE DOE
MA--Ventron Corporation	Beverly	AWE DOE
MA--Watertown Arsenal	Watertown	AWE
MA--Winchester Engineering and Analytical Center	Winchester	DOE
MA--Woburn Landfill	Woburn	AWE
MA--Wyman Gordon Inc	Grayton, North Grafton	BE
MI--AC Spark Plug	Flint	AWE BE

MI--Baker-Perkins Co	Sag:inaw	AWE
MI--Bridgeport Brass Co	Adrian	AWE DOE
MI--Brush Beryllium Co	Detroit	AWE
MI--Carboloy Co	Detroit	AWE
MI--Extruded Metals Co	Grand Rapids	AWE
MI--Gerity-Michigan Corp	Adrian	BE
MI--Mitts & Merrel Co	Saginaw	AWE
MI--Oliver Corp	Battle Creek	AWE
MI--Revere Copper and Brass	Detroit	AWE BE
MI--Speedring Systems, Inc	Detroit	BE
MI--Star Cutter Corp	Farmington	AWE
MI--University of Michigan	Ann Arbor	AWE
MI--Wolverine Tube Division	Detroit	AWE BE
MN--Elk River Reactor	Elk River	DOE
MS--Salmon Nuclear Explosion Site	Hattiesburg	DOE
MO--Kansas City Plant	Kansas City	DOE
MO--Latty Avenue Properties	Hazelwood	AWE DOE
MO--Mallinckrodt Chemical Co, Destrehan St. Plant	St. Louis	AWE DOE
MO--Medart Co	St. Louis	AWE
MO--Roger Iron Co	Joplin	AWE
MO--Spencer Chemical Co	Kansas City	AWE
MO--St. Louis Airport Storage Site (SLAPS)	St. Louis	AWE DOE
MO--Tyson Valley Powder Farm	St. Louis	AWE
MO--United Nuclear	Hematite	AWE

Corp		
MO--Weldon Spring Plant	Weldon Spring	DOE
NE--Hallam Sodium Graphite Reactor	Hallam	DOE
NV--Nevada Test Site	Mercury	DOE
NV--Project Faultless Nuclear Explosion Site	Central Nevada Test Site	DOE
NV--Project Shoal Nuclear Explosion Site	Fallon	DOE
NV--Yucca Mountain Site Characterization Project	Yucca Mountain	DOE
NJ--Aluminum Co of America (Alcoa)	Garwood	AWE
NJ--American Peddinghaus Corp	Moonachle	AWE
NJ--Baker and Williams Co	Newark	AWE
NJ--Bell Telephone Laboratories	Murray Hill	AWE
NJ--Bloomfield Tool Co	Bloomfield	AWE
NJ--Bowen Laboratory	North Branch	AWE
NJ--Callite Tungsten Co	Union City	AWE
NJ--Chemical Construction Co	Linden	AWE
NJ--Du Pont Deepwater Works	Deepwater	AWE DOE
NJ--International Nickel Co, Bayonne Laboratories	Bayonne	AWE
NJ--J.T. Baker Chemical Co	Phillipsburg	AWE
NJ--Kellex/Pierpont	Jersey City	AWE DOE
NJ--Maywood Chemical Works	Maywood	AWE DOE

NJ--Middlesex Municipal Landfill	Middlesex	AWE DOE
NJ--Middlesex Sampling Plant	Middlesex	DOE
NJ--National Beryllia	Haskell	BE
NJ--New Brunswick Laboratory	New Brunswick	DOE
NJ--Picatinny Arsenal	Dover	AWE
NJ--Princeton Plasma Physics Laboratory	Princeton	DOE
NJ--Rare Earths/ W.R. Grace	Wayne	AWE DOE
NJ--Standard Oil Development Co of NJ	Linden	AWE
NJ--Tube Reducing Co	Wallington	AWE
NJ--U.S. Pipe and Foundry	Burlington	BE
NJ--United Lead Co	Middlesex	AWE
NJ--Vitro Corp of America	West Orange	AWE
NJ--Westinghouse Electric Corp	Bloomfield	AWE
NJ--Wykoff Steel Co	Newark	AWE
NM--Chupadera Mesa	Chupadera Mesa	DOE
NM--Los Alamos Medical Center	Los Alamos	DOE
NM--Los Alamos National Laboratory	Los Alamos	DOE
NM--Lovelace Respiratory Research Institute	Albuquerque	DOE
NM--Project Gasbuggy Nuclear Explosion Site	Farmington	DOE
NM--Project Gnome Nuclear Explosion Site	Carlsbad	DOE
NM--Sandia National Laboratories	Albuquerque	DOE

NM--South Albuquerque Works	Albuquerque	DOE
NM--Trinity Nuclear Explosion Site	White Sands Missile Range	DOE
NM--Waste Isolation Pilot Plant	Carlsbad	DOE
NY--Allegheny-Ludlum Steel	Watervliet	AWE
NY--American Machine and Foundry	Brooklyn	AWE
NY--Ashland Oil	Tonawanda	AWE DOE
NY--Baker and Williams Warehouses	New York	AWE DOE
NY--Bethlehem Steel	Lackawana	AWE
NY--Bliss & Laughlin Steel	Buffalo	AWE DOE
NY--Brookhaven National Laboratory	Upton	DOE
NY--Burns & Roe, Inc	Maspeth	BE
NY--Colonie Site (National Lead)	Colonie (Albany)	AWE DOE
NY--Columbia University	New York City	AWE DOE
NY--Crucible Steel Co	Syracuse	AWE
NY--Electro Metallurgical	Niagara Falls	AWE
NY--General Astrometals	Yonkers	BE
NY--Hooker Electrochemical	Niagara Falls	AWE
NY--International Rare Metals, Inc	Mt. Kisco	AWE
NY--Ithaca Gun Co	Ithaca	AWE
NY--Lake Ontario Ordnance Works	Niagara Falls	DOE
NY--Ledoux and Co	New York	AWE
NY--Linde Air Products	Buffalo	AWE

NY--Linde Ceramics Plant	Tonawanda	AWE DOE
NY--New York University	New York	AWE
NY--Peek Street Facility [FN1]	Schenectady	DOE
NY--Radium Chemical Co	New York	AWE
NY--Rensselaer Polytechnic Institute	Troy	AWE
NY--Sacandaga Facility [FN1]	Glenville	DOE
NY--Seaway Industrial Park	Tonawanda	AWE DOE
NY--Seneca Army Depot	Romulus	AWE
NY--Separations Process Research Unit (at Knolls Lab.) [FN1]	Schenectady	DOE
NY--Simonds Saw and Steel Co	Lockport	AWE
NY--Staten Island Warehouse	New York	AWE
NY--Sylvania Corning Nuclear Corp--Bayside Laboratories	Bayside	AWE BE
NY--Sylvania Corning Nuclear --Hicksville Plant	Hicksville	AWE DOE
NY--Titanium Alloys Manufacturing	Niagara Falls	AWE
NY--Trudeau Foundation	Saranac Lake	BE
NY--University of Rochester Medical Laboratory	Rochester	AWE DOE
NY--Utica St. Warehouse	Buffalo	AWE
NY--West Valley Demonstration Project	West Valley	DOE
NY--Wolff-Alport	Brooklyn	AWE

Chemical Corp		
NC--Beryllium Metals and Chemical Corp	Bessemer City	BE
NC--University of North Carolina	Chapel Hill	BE
OH--Ajax Magnathermic Corp	Youngstown	AWE
OH--Alba Craft	Oxford	AWE DOE
OH--Associated Aircraft Tool and Manufacturing Co	Fairfield	AWE DOE
OH--B & T Metals	Columbus	AWE DOE
OH--Baker Brothers	Toledo	AWE DOE
OH--Battelle Laboratories--King Avenue	Columbus	AWE BE DOE
OH--Battelle Laboratories--West Jefferson	Columbus	AWE DOE
OH--Beryllium Production Plant (Brush)	Luckey	BE DOE
OH--Brush Beryllium Co	Cleveland	AWE BE
OH--Brush Beryllium Co	Lorain	BE
OH--Brush Beryllium Co	Elmore	BE
OH--Cincinnati Milling Machine Co	Cincinnati	AWE
OH--Clifton Products Co	Painesville	BE
OH--Copperweld Steel	Warren	AWE
OH--Du Pont-Grasselli Research Laboratory	Cleveland	AWE
OH--Extrusion Plant (Reactive Metals Inc.)	Ashtabula	DOE
OH--Feed Materials	Fernald	DOE

Production Center (FMPC)		
OH--General Electric Company	Cincinnati/Evendale	AWE BE DOE
OH--Gruen Watch	Norwood	AWE
OH--Harshaw Chemical Co	Cleveland	AWE
OH--Herring-Hall Marvin Safe Co	Hamilton	AWE DOE
OH--Horizons, Inc	Cleveland	AWE
OH--Kettering Laboratory, University of Cincinnati	Cincinnati	BE
OH--Magnus Brass Co	Cincinnati	AWE
OH--McKinney Tool and Manufacturing Co	Cleveland	AWE
OH--Mitchell Steel Co	Cincinnati	AWE
OH--Monsanto Chemical Co	Dayton	AWE
OH--Mound Plant	Miamisburg	DOE
OH--Painesville Site (Diamond Magnesium Co)	Painesville	AWE DOE
OH--Piqua Organic Moderated Reactor	Piqua	DOE
OH--Portsmouth Gaseous Diffusion Plant	Piketon	DOE
OH--R. W. Leblond Machine Tool Co	Cincinnati	AWE
OH--Tech-Art, Inc	Milford	AWE
OH--Tocco Induction Heating Div	Cleveland	AWE
OH--Vulcan Tool Co	Dayton	AWE
OK--Kerr-McGee	Guthrie	AWE
OR--Albany Research Center	Albany	AWE DOE

OR--Wah Chang	Albany	AWE
PA--Aeroprojects, Inc	West Chester	AWE BE
PA--Aliquippa Forge	Aliquippa	AWE DOE
PA--Aluminum Co of America (Alcoa)	New Kensington	AWE
PA--Beryllium Corp of America	Hazleton	BE
PA--Beryllium Corp of America	Reading	BE
PA--Birdsboro Steel & Foundry	Birdsboro	AWE
PA--C.H. Schnoor	Springdale	AWE DOE
PA--Carnegie Institute of Technology	Pittsburgh	AWE
PA--Carpenter Steel Co	Reading	AWE
PA--Chambersburg Engineering Co	Chambersburg	AWE
PA--Foote Mineral Co	East Whiteland Twp	AWE
PA--Frankford Arsenal	Philadelphia	AWE
PA--Heppenstall Co	Pittsburgh	AWE
PA--Jessop Steel Co	Washington	AWE
PA--Koppers Co, Inc	Verona	AWE
PA--Landis Machine Tool Co	Waynesboro	AWE
PA--McDaniel Refractory Co	Beaver Falls	BE
PA--Nuclear Materials and Equipment Corp. (NUMEC)	Apollo	AWE BE
PA--Nuclear Materials and Equipment Corp. (NUMEC)	Parks Township	AWE
PA--Penn Salt Co	Philadelphia/Wyndmoor	AWE
PA--Philadelphia Naval	Philadelphia	AWE

Yard		
PA--Shippingport Atomic Power Plant	Shippingport	DOE
PA--Superior Steel Co	Carnegie	AWE
PA--U.S. Steel Co, National Tube Division	McKeesport	AWE
PA--Vitro Manufacturing	Canonsburg	AWE BE
PA--Westinghouse Atomic Power Development Plant	East Pittsburg	AWE
PR--BONUS Reactor Plant	Punta Higuera	DOE
PR--Puerto Rico Nuclear Center	Mayaguez	DOE
RI--C.I. Hayes, Inc	Cranston	AWE
SC--Savannah River Site	Aiken	DOE
TN--Clarksville Facility	Clarksville	DOE
TN--Oak Ridge Gaseous Diffusion Plant (K-25)	Oak Ridge	DOE
TN--Oak Ridge Hospital	Oak Ridge	DOE
TN--Oak Ridge Institute for Science Education	Oak Ridge	DOE
TN--Oak Ridge National Laboratory (X-10)	Oak Ridge	DOE
TN--Vitro Corp. of America	Chattanooga	AWE BE
TN--W. R. Grace	Erwin	AWE
TN--Y-12 Plant	Oak Ridge	DOE
TX--AMCOT	Fort Worth	AWE
TX--Mathieson Chemcial Co	Pasadena	AWE
TX--Medina Facility	San Antonio	DOE
TX--Pantex Plant	Amarillo	DOE
TX--Sutton, Steele and Steele Co	Dallas	AWE
TX--Texas City	Texas City	AWE

Chemicals, Inc		
VA--Babcock & Wilcox Co	Lynchburg	AWE
VA--Thomas Jefferson National Accelerator Facility	Newport News	DOE
VA--University of Virginia	Charlottesville	AWE
WA--Hanford	Richland	DOE
WA--Pacific Northwest National Laboratory	Richland	DOE
WV--Huntington Pilot Plant	Huntington	AWE DOE
WI--Allis-Chalmers Co	West Allis, Milwaukee	AWE
WI--Besley-Wells	South Beloit	AWE
WI--LaCrosse Boiling Water Reactor	LaCrosse	DOE
WI--Ladish Co	Cudahy	BE
MR--Pacific Proving Ground	Marshall Islands	DOE

FN1 Consistent with the Act, coverage is limited to activities not performed
under the responsibility of the Naval Nuclear Propulsion program.
FN2 Pacific Proving Ground includes Bikini Atoll, Enewetak Atoll, Johnston
(nuclear weapons testing activities only), and Christmas Island (U.S. nuclear
weapons testing activities only).

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